

<b>INFORMATION TO OFFERORS OR QUOTERS</b> <b>SECTION A - COVER SHEET</b>		<b>1. SOLICITATION NUMBER</b>  <b>SP0600-00-R-0031</b>	<b>2. (X one)</b> <table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 5%;"></td> <td>a. SEALED BID</td> </tr> <tr> <td style="text-align: center;"><b>X</b></td> <td>b. NEGOTIATED (RFP)</td> </tr> <tr> <td></td> <td>c. NEGOTIATED (RFQ)</td> </tr> </table>		a. SEALED BID	<b>X</b>	b. NEGOTIATED (RFP)		c. NEGOTIATED (RFQ)
	a. SEALED BID								
<b>X</b>	b. NEGOTIATED (RFP)								
	c. NEGOTIATED (RFQ)								

**INSTRUCTIONS**

**NOTE THE AFFIRMATIVE ACTION REQUIREMENT OF THE EQUAL OPPORTUNITY CLAUSE THAT MAY APPLY TO THE CONTRACT RESULTING FROM THIS SOLICITATION.**

**"Fill-ins" are provided on the face and reverse of Standard Form 18 and Parts I and IV of Standard Form 33, or other solicitation documents and Sections of Table of Contents in this solicitation and should be examined for applicability.**

**See the provision of this solicitation entitled either "Late Bids, Modifications of Bids or Withdrawal of Bids" or "Late Proposals, Modifications of Proposals and Withdrawals of Proposals." NOTE: The new title of this clause is "LATE SUBMISSIONS, MODIFICATIONS AND WITHDRAWALS OF PROPOSALS."**

**When submitting your reply, the envelope used must be plainly marked with the Solicitation Number, as shown above and the date and local time set forth for bid opening or receipt of proposals in the solicitation document.**

**If NO RESPONSE is to be submitted, detach this sheet from the solicitation, complete the information requested on reverse, fold, affix postage, and mail. NO ENVELOPE IS NECESSARY.**

**Replies must be set forth full, accurate, and complete information as required by this solicitation (including attachments). The penalty for making false statements is prescribed in 18 U.S.C. 1001.**

<b>3. ISSUING OFFICE (Complete mailing address, including Zip Code)</b> <div style="display: flex; justify-content: space-between;"> <div style="width: 50%;"> ATTN: ALICIA WILLIAMS/DESC-FPC/RM 2941  DEFENSE ENERGY SUPPORT CENTER  8725 JOHN KINGMAN ROAD, SUITE 4950  FORT BELVOIR, VA 22060-6222 </div> <div style="width: 45%;"> PPN: 6.2  EMAIL: <a href="mailto:awilliams@desc.dla.mil">awilliams@desc.dla.mil</a>  FAX: 703-767-8506  TELEPHONE: 703-767-9340 </div> </div>			
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**4. ITEMS TO BE PURCHASED (Brief description)**  
Services and facilities to receive, store, protect and ship one grade of U.S. Government-owned fuel (AviationTurbine Fuel (JP8)). Area of consideration is limited to the HONSHU region of JAPAN in the area of HACHINOHE. Tankage Required: 75,000 bbls with a minimum of two tanks interconnected. See clause B34.01 for definition of estimated throughput. Period of Performance: Beginning September 1, 2000 through August 31, 2002 for a two year contract with three (3) one year options to renew.

<b>5. PROCUREMENT INFORMATION (X and complete as applicable)</b>			
<b>X</b>	<b>a. THIS PROCUREMENT IS UNRESTRICTED</b>		
	<b>b. THIS PROCUREMENT IS A _____ % SET-ASIDE FOR ONE OF THE FOLLOWING (X One). (See Section I of the Table of Contents in this solicitation for details of the set-aside.)</b>		
	(1) Small Business	(2) Labor Surplus Area Concerns	(3) Combined Small Business/Labor Area Concerns

1. Facsimile proposals are authorized for this solicitation by the closing date (see clause L2.11-2).

2. Offers should be submitted on the most favorable terms possible from a price and technical standpoint.

3. Please be certain to clearly identify all exceptions to the solicitation's terms and conditions, if any, and acknowledge receipt and acceptance of all amendments to this solicitation.

4. If your firm does not wish to offer on this solicitation, but does wish to remain on the mailing list, this form must be returned to DFSC within 30 days after the closing date of the solicitation. FAILURE to respond within the time frame may result in automatic removal from the mailing list.

<b>7. POINT OF CONTACT FOR INFORMATION</b>	
<b>a. NAME (Last, First, Middle Initial)</b> WILLIAMS, ALICIA C.	<b>b. ADDRESS (Including Zip Code)</b> ATTN: ALICIA WILLIAMS/DESC-FPC DEFENSE ENERGY SUPPORT CENTER 8725 JOHN KINGMAN ROAD, SUITE 2941 FORT BELVOIR, VA 22060-6222
<b>c. TELEPHONE NUMBER (Including Area Code and Extension)</b> (703) 767-9340	

<b>8. REASONS FOR NO RESPONSE (<i>X all that apply</i>)</b>			
<b>a. CANNOT COMPLY WITH SPECIFICATIONS</b>		<b>b. CANNOT MEET DELIVERY REQUIREMENTS</b>	
<b>c. UNABLE TO IDENTIFY THE ITEM(S)</b>		<b>d. DO NOT REGULARLY MANUFACTURE OR SELL THE TYPE OF ITEMS INVOLVED</b>	
<b>e. OTHER (<i>Specify</i>)</b>			
<b>9. MAILING LIST INFORMATION (<i>X one</i>)</b>			
<b>YES</b>	<b>NO</b>	<b>WE DESIRE TO BE RETAINED ON THE MAILING LIST FOR FUTURE PROCUREMENT OF THE TYPE OF ITEM(S) INVOLVED.</b>	
<b>10. RESPONDING FIRM</b>			
<b>a. COMPANY NAME</b>		<b>b. ADDRESS (<i>Including Zip Code</i>)</b>	
<b>c. ACTION OFFICER</b>			
<b>(1) Typed or Printed Name (Last, First, Middle Initial)</b>	<b>(2) Title</b>	<b>(3) Signature</b>	<b>(4) Date Signed (YY-MM-DD)</b>

DD Form 1707 Reverse, MAR 90

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FROM

AFFIX  
STAMP  
HERE

<b>SOLICITATION NUMBER</b>	
<b>SP0600-00-R-0031</b>	
<b>6 Mar 2000</b>	<b>LOCAL TIME 3:00 PM</b>

TO    **ATTN: BID CUSTODIAN, DESC-CPC, ROOM 3815  
DEFENSE ENERGY SUPPORT CENTER  
8725 JOHN J. KINGMAN ROAD  
FORT BELVOIR, VA 22060-6222**

5. Notice: Any contract awarded to a Contractor who, at the time of award was suspended, debarred, ineligible for receipt of contract with Government Agencies or in receipt of a notice of proposed debarment from any Government Agency, is voidable at the option of the Government.
6. Please complete the following: SF33 and the appropriate clauses listed in the OFFEROR SUBMISSION PACKAGE. Return the Offeror Submission Package included in this solicitation as your offer instead of the entire solicitation package. (see clause L201.02 INSTRUCTIONS TO OFFERS (COCO)(DESC MAY 1997)
7. In case of emergency during non-duty hours, contact the Emergency Supply Operation Center (ESOC) at (703) 767-8420.
8. Any questions regarding this requirement should be submitted to this office either by mail or fax (703) 767-9338 no later than 23 February 2000.
9. The Government may award a contract based on initial offers received; therefore, offers should be submitted on the most favorable terms possible from a price and technical standpoint.
10. Questions regarding small business matters may be directed to Ms. Kathy Williams, Defense Energy Support Center Small Business Office, telephone (703) 767-9465.

<b>SOLICITATION, OFFER AND AWARD</b>				1. THIS CONTRACT IS A RATED ORDER UNDER DPAS (15 CFR 350)		RATING		PAGE OF PAGES 1   75		
2. CONTRACT (Proc. Inst. Ident.) NO.			3. SOLICITAION NO. <b>SP0600-00-R-0031</b>		4. TYPE OF SOLICITATION [ ] SEALED BID (IFB) [x] NEGOTIATED (RFP)		5. DATE ISSUED <b>February 3, 2000</b>		6. REQUISITION/PURCHASE NO. <b>SP0600-00-0106</b>	
7. ISSUED BY <b>Defense Energy Support Center 8725 John J. Kingman Road, Suite 2945 Ft. Belvoir, VA 22060-6222 PP: 6.2 Buyer/Symbol: Alicia Williams/DESC-FPC Phone: (703) 767-9340 Fax: 767-8506 Email: awilliams@desc.dla.mil</b>				CODE <b>SCO600</b>		8. ADDRESS OFFER TO (If other than item 7) <b>ATTN: BID CUSTODIAN, DESC-CPC, RM 3815 Defense Energy Support Center 8725 John J. Kingman Road, Suite 4950 Fort. Belvoir, VA 22060-6222 FAX: 703-767-8506 Verification: 703-767-8758</b>				
NOTE: In sealed bid solicitation "offer" and "offeror mean "bid" and "Bidder".										
<b>SOLICITATION</b>										
9. Sealed offers in original and <b>1 (one)</b> copies for furnishing the supplies or services in the Schedule will be received at the place specified, in the depository located in <b>DESC-CPC: Room 3815</b> until <b>3:00 PM</b> local time <b>March 6, 2000</b> . (hour) (date)										
CAUTION - LATE Submissions, Modifications, and Withdrawals: See Section L. Provision No. 52.215-10. All offers are subject to all tems and conditions contained in this solicitation. See Clause L3.02										
10. FOR INFORMATION CALL:		A. NAME <b>ALICIA WILLIAMS</b>				B. TELEPHONE NO. (Include Area Code) (NO COLLECT CALLS) <b>(703) 767-9340</b>				
<b>11. TABLE OF CONTENTS</b>										
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<b>OFFER (Must be fully completed by offeror)</b>										
NOTE: ITEM 12 does not apply if the solicitation includes the provisions at 52.214-16, Minimum Bid Acceptance Period.										
12. In compliance with the above, the undersigned agrees, if this offer is accepted within <b>****</b> calendar days (60 calendar days unless a different period is inseted by the offer) from the date for receipt of offers specified above, to furnish any or all items upon which prices are offered at the price set opposite each item, delivered at the designated point(s), within the time specified in the schedule. <b>****See Clause L1.02</b>										
13. DISCOUNT FOR PROMPT PAYMENT (See section I, Clause No 52.232-8)			10 CALENDAR DAYS %	20 CALENDAR DAYS %	30 CALENDAR DAYS %	CALENDAR DAYS %				
14. ACKNOWLEDGMENT OF AMENDMENTS The offeror acknowledges receipt of amendments to the solicitation for offerors and related documents numbered and dated:			AMENDMENT NO.		DATE		AMENDMENT NO.		DATE	
15A. Name of Offeror	Address of Offeror		CODE	FACILITY		16. NAME AND TITLE OF PERSON AUTHORIZED TO SIGN OFFER (Type or print)				
15B. TELEPHONE NO. (Include area code)			15C. CHECK IF REMITTANCE ADDRESS [ ] IS DIFFERENT FROM ABOVE - ENTER SUCH ADDRESS			17. SIGNATURE		18. OFFER DATE		
<b>AWARD (To be completed by Government)</b>										
19. ACCEPTED AS TO ITEM NUMBERED			20. AMOUNT		21. ACCOUNTING AND APPROPRIATION					
22. AUTHORITY FOR USING OTHER THAN FULL AND OPEN COMPETITION: [ ] 10 U.S.C. 2304(c)( ) [ ] 41 U.S.C. 253(c)( )					23. SUBMIT INVOICES TO ADDRESS SHOWN IN (4 copies unless otherwise specified)			ITEM		
24. ADMINISTRATION BY (If other than Item 7)				CODE	25. PAYMENT WILL BE MADE BY					CODE
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## **SECTION B - SUPPLIES OR SERVICE AND PRICE/COSTS**

### **STATEMENT OF REQUIREMENT FOR CONTRACT SERVICES IN THE HONSHU REGION OF JAPAN IN THE AREA OF HACHINOHE**

#### **B34.01 SERVICES TO BE FURNISHED AND PRICES (DESC FEB 1991)**

The services to be furnished during the period specified herein and the unit prices are as follows:  
(DESC 52.207-9F85)

Defense Fuel Support Point services are required in the Hachinohe, Japan area for the period beginning September 1, 2000. Request a two-year contract with three one-year options to renew.

1. **AREA OF CONSIDERATION:** Limited to HONSHU region of JAPAN in the area of HACHINOHE.
2. **TANKAGE REQUIRED:** Approximately 75,000 barrels of storage. A minimum of two tanks interconnected for Aviation Turbine Fuel Grade JP8 is preferred. A dedicated system is preferred; however, a common isolated system will be considered providing the offer includes the data required by Clause L116.01.
3. **ESTIMATED THROUGHPUT:** 300,000 barrels for each 12-month contract period excluding initial fill and final shipment. Throughput is based upon receipts plus issues, divided by two.
4. **GRADE OF SERVICE:** Aviation Turbine Fuel Grade JP8
5. **RECEIVING CAPABILITY:** Via tanker/barge on a 24-hour per day, 7-day per week schedule at rates compatible with the mode of transportation tendered; normally 1,272 m<sup>3</sup> (8,000 barrels) per hour for tanker and 318 m<sup>3</sup> (2,000 barrels) per hour for barges. Lesser receiving rates will be considered but will be included in the cost assessments when evaluating offers. The facility is required to have a tanker/barge berth and channel to open sea; a minimum capacity to receive vessels with a draft of 7.3 meters (24 feet) at mean low water; and a capacity to expand the tanker/barge Contractor-furnished pipeline connection, as necessary, to meet emergency requirements; however, offers with a minimum capacity to receive vessels with a draft of 6.7 (22 feet) at mean low tide will be considered. An additional preference will be given to facilities with a draft at mean low tide greater than 11 meters (36 feet).
6. **SHIPPING CAPABILITY:** Shipments to U.S. Government-operated Hachinohe POL Depot, Facility 2006, will be via Contractor-furnished pipeline connection. Contractor-furnished pipeline must include access to the pipeline connection to the Hachinohe GOGO terminal and the Hachinohe COCO terminal. A pumping rate 318 m<sup>3</sup> (2,000 barrels) per hour is desired; however facilities with lesser capabilities will be considered.
7. **ANCILLIARY FACILITIES:** Fuel Filtration/Separation Capability: A Contractor-furnished fuel filtration/separation system is required that allows the JP8 fuel to be filtered, when needed, during tank-to-tank transfers and when replacing dormant fuel in pipelines or when re-packing the pipelines with fuel. The fuel filtration/separation system must be of the kind that meets the specifications outline in the current American Petroleum Institute (API) publication 1581, "Specifications and Qualification Procedures - Aviation Jet Fuel Filter/Separator."

All tanks and facilities must meet the minimum requirement of the current API standards, the NFPA codes, and all laws, regulations, etc., applicable to tanks and facilities of the type to be provided. Cone-roof tanks with interior floating roof pans are preferred, however, floating rook tanks will be acceptable. Floating roof tanks will be equipped with roof drains, which prevent water from coming into contact with the fuel. The tanks shall be connected so as to provide the capability of re-circulating/filtering of products between tanks.



In the absence of any contract provisions or references to a method, specification or other instruction, the contractor shall perform all services hereunder in accordance with the best commercial practices.

Type "B-1" laboratory testing of Aviation Turbine Fuel Grade JP8 in accordance with the appropriate ASTM procedures.

All other standard clauses that apply to COCO contracts are applicable to this requirement.

**LINE ITEM 1001 (MUCC): PERFORMANCE PERIOD: 01 SEPTEMBER 2000 - 31 AUGUST 2002:**

TANK NUMBER/ TANK TYPE/PRODUCT <u>TO BE STORED</u>	FILL CAPACITY <u>(BARRELS)</u>	SHELL CAPACITY <u>(BARRELS)</u>	USE CHARGE PER TANK PER MONTH (PRORATED FOR PART MONTHS)(INCLUDES INITIAL FILL & FINAL <u>SHIPMENT</u> )
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**LINE ITEM 1002 (MUCC): 1<sup>st</sup> OPTION TO RENEW: (01 SEPTEMBER 2002 - 31 AUGUST 2003):**

TANK NUMBER/ TANK TYPE/PRODUCT <u>TO BE STORED</u>	FILL CAPACITY <u>(BARRELS)</u>	SHELL CAPACITY <u>(BARRELS)</u>	USE CHARGE PER TANK PER MONTH (PRORATED FOR PART MONTHS)(INCLUDES INITIAL FILL & FINAL <u>SHIPMENT</u> )
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**LINE ITEM 1003 (MUCC): 2<sup>nd</sup> OPTION TO RENEW (01 SEPTEMBER 2003 - 31 AUGUST 2004):**

TANK NUMBER/ TANK TYPE/PRODUCT <u>TO BE STORED</u>	FILL CAPACITY <u>(BARRELS)</u>	SHELL CAPACITY <u>(BARRELS)</u>	USE CHARGE PER TANK PER MONTH (PRORATED FOR PART MONTHS)(INCLUDES INITIAL FILL & FINAL <u>SHIPMENT</u> )
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**LINE ITEM 1004 (MUCC): 3<sup>rd</sup> OPTION TO RENEW (01 SEPTEMBER 2004 - 31 AUGUST 2005):**

<u>TANK NUMBER/ TANK TYPE/PRODUCT TO BE STORED</u>	<u>FILL CAPACITY (BARRELS)</u>	<u>SHELL CAPACITY (BARRELS)</u>	<u>USE CHARGE PER TANK PER MONTH (PRORATED FOR PART MONTHS)(INCLUDES INITIAL FILL &amp; FINAL SHIPMENT)</u>
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**SUBLINE ITEM NUMBER 1001AA**

For the first 300,000 barrels of product received into storage after initial fill, per year or prorated for part thereof for any part year that the use of the storage is limited to a period of less than one year.....NO

ADDITIONAL CHARGE (Included in Tankage charge)

**SUBLINE ITEM NUMBER 1001AB**

For the first 300,000 barrels of product shipped from storage after initial fill, per year or prorated for part thereof for any part year that the use of the storage is limited to a period of less than one year.....NO ADDITIONAL CHARGE

(Included in Tankage charge)

**SUBLINE ITEM NUMBER 1001AC (EXTP)**

Excess throughput: Product received and shipped annually in excess throughput of 300,000 barrels. Charges are as follows: .....\$\_\_\_\_\_ per barrels.

**SECTION C - DESCRIPTION/SPECS/WORK STATEMENT**

**C19.01 SECURITY AND FIRE PROTECTION (DESC AUG 1988)**

(a) A fence suitable to deter unauthorized access shall enclose the entire facility. The fence shall be fitted with gates that may be padlocked when not in use.

(b) A method of visitor and entrance control will be in effect. A visitor register shall be maintained.

(c) An internal, self-powered communication system linking all critical points of the facility, capable of serving both as an alarm system and for conduct of terminal operation, will be in use.

(d) A water supply and fire fighting equipment conforming to National Fire Protection Association and American Petroleum Institute standards will be maintained. At locations outside the United States, other standards may be used with prior approval of the Contracting Officer.

(e) In the event of an emergency at a CONUS COCO terminal, the Contractor shall seek the assistance of the following as appropriate: local ambulance service; local fire department; local, county, and State police; regional office of the Federal Bureau of Investigation; Secret Service; U.S. Marshal's Service; and the Federal Emergency Management Agency.

(DESC 52.211-9FL1)

**C19.04 REMOVAL OF WATER BOTTOMS (DESC FEB 1998)**

Storage tanks for DESC use shall be equipped with positive water sumps for removal of all water bottoms. All storage tanks shall be drained of water a minimum of once each week and whenever storage tank gauging indicates water is present. (Weekly water drainage is necessary because the datum plate may not necessarily be the low point in the storage tank. Water could possibly accumulate below the datum plate and not show up in the gauging process.) Additionally, all storage tanks shall be drained of water prior to any transfer of fuel and after a minimum of 4 hours or maximum of 24 hours settling time following each product receipt. Storage tanks equipped with floating roofs shall be gauged for water after each rain and drained if water is found present.

Product and water levels shall be gauged before and after the draining of water. Water gauges of each storage tank shall be taken and recorded each time it is gauged for product. (Each storage tank shall be equipped with a fuel/water separation system for collection of all product or water dispensed from its bottom water drain(s). This system shall have the capability to return separated product back into the same storage tank.)

(DESC 52.211-9FM1)

**C19.07 TESTING OF PETROLEUM PRODUCTS (DESC AUG 1991)**

(a) The tests identified in attachment 1 of the solicitation are a required part of the services to be provided. The Contractor will provide these tests in the following manner (please mark applicable box):

☐ The Contractor will perform the tests using its own qualified personnel, facilities, and equipment. (All costs for this service are to be included in the monthly service charge.)

☐ The Contractor will not perform the tests with its own personnel, but will provide on a seven days per week, 24 hours per day, basis, all facilities and equipment for testing of product by Government personnel. (All costs for this service are to be included in the monthly service charge.)

☐ The Contractor will not provide its own personnel, facilities, or equipment. Instead, upon the Government's request, the Contractor will transport any sample(s) to a commercial laboratory approved by the Government and arrange for the commercial laboratory to perform all required tests. (The Government will reimburse the Contractor for the actual costs of the tests by the commercial laboratory. All other associated costs are to be included in the monthly service charge.)

(b) All facilities and equipment to be provided, whether that of a Contractor or commercially owned, must conform to the standards for such facilities and equipment established by the Occupational Safety and Health Act and implementing regulations and the National Fire Protection Association.

(DESC 52.211-9FL5)

**SECTION E - INSPECTION AND ACCEPTANCE**

**E1.01 CONTRACTOR RESPONSIBILITY FOR GOVERNMENT INSPECTION OF SERVICES (DESC AUG 1981)**

If any inspection or test is made by the Government on the premises of the Contractor or subcontractor, the Contractor without additional charge shall provide all reasonable facilities and assistance for the safety and convenience of the Government inspectors in the performance of their duties. (DESC 52.246-9FE5)

**E5.03 INSPECTION OF SERVICES - FIXED-PRICE (AUG 1996)**

(a) **DEFINITION. Services**, as used in this clause, includes services performed, workmanship, and material furnished or utilized in the performance of services.

(b) The Contractor shall provide and maintain an inspection system acceptable to the Government covering the services under this contract. Complete records of all inspection work performed by the Contractor shall be maintained and made available to the Government during contract performance and for as long afterwards as the contract requires.

(c) The Government has the right to inspect and test all services called for by the contract, to the extent practicable, at all times and places during the term of the contract. The Government shall perform inspections and tests in a manner that will not unduly delay the work.

(d) If the Government performs inspections or tests on the premises of the Contractor or a subcontractor, the Contractor shall furnish, and shall require subcontractors to furnish, at no increase in contract price, all reasonable facilities and assistance for the safe and convenient performance of these duties.

(e) If any of the services do not conform with contract requirements, the Government may require the Contractor to perform the services again in conformity with contract requirements, at no increase in contract amount. When the defects in services cannot be corrected by reperformance, the Government may (1) require the Contractor to take necessary action to ensure that future performance conforms to contract requirements and (2) reduce the contract price to reflect the reduced value of the services performed.

(f) If the Contractor fails to promptly perform the services again or to take the necessary action to ensure future performance in conformity with contract requirements, the Government may (1) by contract or otherwise, perform the services and charge to the Contractor any cost incurred by the Government that is directly related to the performance of such service or (2) terminate the contract for default.

(FAR 52.246-4)

**E18 INSPECTION AND CLEANING OF BULK PETROLEUM STORAGE TANKS (DESC AUG 1994)**

(a) The Contractor shall maintain and make available upon request the following historical data relative to each storage tank provided:

- (1) Date and type of construction;
- (2) Name of installing contractor;
- (3) Product service (past and present) and dates;
- (4) Date of last cleaning/physical entry inspection and contractor's name;
- (5) Structural condition based on cycle inspection at the time of cleaning or repair;
- (6) Record of tank repairs;
- (7) Tank dimensions and capacity;
- (8) Inspection and tank cleaning frequency;
- (9) Tank coating history;
- (10) Tank strapping charts;
- (11) As built drawings (if available); and
- (12) Records of product tests and trends.

(b) At the Contractor's expense, the Contractor shall empty, inspect, and clean each bulk petroleum storage tank and dispose of all tank bottom waste for each tank furnished under this contract at the following intervals:

**(1) AVIATION FUEL STORAGE TANKS.**

- (i) Every 4 years for uncoated storage tanks without an inlet-filter separator;
- (ii) Every 6 years for coated tanks or tanks equipped with an inlet-filter separator; and
- (iii) Every 8 years for coated tanks with an inlet-filter separator.
- (iv) For storage tanks with direct receipt of fuel from barge or tanker, the frequency for physical entry inspection and cleaning will be 3, 5, and 8 years for (i), (ii), and (iii) above, respectively.
- (v) Tanks will be emptied, cleaned, and inspected more frequently than the periods stated in (i) through (iv) above when sample analysis indicates a build up of sediment in the tanks.

**(2) GROUND AND MARINE FUEL STORAGE TANKS.** Tanks will be emptied, cleaned, and inspected when sample analysis indicates a build up of sediment in the storage tanks.

(c) The time for cleaning will be measured from the date of the last cleaning regardless of whether the tank was under contract with DESC at the time of the last cleaning.

(d) MIL-STD-457B, dated March 20, 1989, is hereby incorporated by reference. Samples will be taken and tested at Government expense. If tanks require cleaning as a result of off-specification product introduced by the Government, or as a result of product changeover required by the Government, tanks will be cleaned at the Government's expense and remain on revenue. In all other cases, tanks requiring cleaning will be removed from revenue and cleaned at the Contractor's expense.

(DESC 52.246-9FF1)

**E22.01 QUALITY REPRESENTATIVE (DESC JUL 1992)**

The Quality Office assigned inspection responsibility under this contract is:

Commander  
DFR - Pacific  
Box 64110  
Camp H.M. Smith, HI 96861-4110  
Tel. (808) 477-5710 Fax: (808) 477-1172

(DESC 52.246-9F35)

**E22.03 LIST OF INSPECTORS FOR PETROLEUM STORAGE AND LABORATORY SERVICES CONTRACTS**

**(DESC JUN 1993)**

This List of Inspectors shall be used to identify, by location, the Government inspector (Quality Surveillance Representative) assigned inspection responsibilities under DESC storage and laboratory services

contracts. The area of inspection responsibility and identifying office are assigned below. Inspection offices are indicated in numbered footnotes at the end of each paragraph.

(a) **AREA OF RESPONSIBILITY WITHIN CONUS, CENTRAL AMERICA OR SOUTH AMERICA:**

<u>AREA</u> <u>FOOTNOTE</u>	<u>FOOTNOTE</u>	<u>AREA</u>	
Alabama	3	Nebraska	2
Arizona	3	Nevada	4
Arkansas	3	New Hampshire	1
California	4	New Jersey	1
Caribbean countries	3	New Mexico	3
Central America	3	New York	1
Colorado	2	North Carolina	3
Connecticut	1	North Dakota	2
Delaware	1	Ohio	2
District of Columbia	1	Oklahoma	3
Florida	3	Oregon	4
Georgia	3	Pennsylvania	1
Idaho	4	Puerto Rico	3
Illinois	2	Rhode Island	1
Indiana	2	South America	3
Iowa	2	South Carolina	3
Kansas	2	South Dakota	2
Kentucky	2	Tennessee	3
Louisiana	3	Texas	3
Maine	1	Utah	4
Maryland	1	Vermont	1
Massachusetts	1	Virginia	1
Mexico	3	Washington	4
Michigan	2	West Indies	3
Minnesota	2	West Virginia	1
Mississippi	3	Wisconsin	2
Missouri	2	Wyoming	2
Montana	4		

FOOTNOTES:

1. DFR Northeast (DFR-NE)  
2404 Tuskegee Airmen Ave.  
McGuire AFB, NJ 08641-5112

Phone: DSN 440-3766  
COM (609) 724-3766  
FAX DSN 440-3106

2. DFR Central (DFR-C)  
8900 S. Broadway, Building 2  
St. Louis, MO 63125-1513

Phone: DSN 693-8346  
COM (314) 263-8346  
FAX DSN 693-8429

3. DFR South (DFR-S)  
Federal Building, Room 1005  
2320 LaBranch Street  
Houston, TX 77004-1091

Phone: DSN 940-1152

4. DFR West (DFR-W)  
3171 N. Gaffey Street  
San Pedro, CA 90731-1099

Phone: DSN 972-3090

COM (713) 750-1371  
FAX (713) 750-1891

COM (310) 335-3090  
FAX (310) 514-6106

(b) **OVERSEAS AREA OF RESPONSIBILITY (INCLUDING ALASKA AND HAWAII):**

<u>AREA</u>	<u>FOOTNOTE</u>	<u>AREA</u>	
<u>FOOTNOTE</u>			
Afghanistan	2	Marianas	3
Africa (except countries assigned to DFR Middle East)	1	Mediterranean Sea countries	1
Alaska	3	New Zealand	3
Australia	3	Oman	2
Bahrain	2	Pakistan	2
Burma	3	Philippines	3
Djibouti	2	Qatar	2
East Indies	3	Ryukyu Islands	3
Egypt	2	Saudi Arabia	2
Ethiopia	2	Somalia	2
Europe (continental)	1	South Pacific Islands	3
Hawaii	3	Sri Lanka	3
Indian Ocean countries	3	Sudan	2
Japan	3	Taiwan	2
Jordan	2	Thailand	3
Kenya	2	Turkey	1
Korea	3	United Arab Emirates	2
Kuwait	2	United Kingdom	1
Malaya	3	Yemen	2

FOOTNOTES:

1. DFR Europe (DFR-E)  
Unit 23306  
APO AE 09189  
  
Phone: Pirmasens, Germany  
DSN (314) 495-6014  
COM 49-633-186-6014  
FAX 011 49-633-186-6026
2. DFR Middle East (DFR-ME)  
PSC 451, Box 386  
FPO AE 09834-0386  
  
Phone: Awali, Bahrain  
DSN (318) 439-4650  
COM 011 973-724650  
FAX 011 973-724670
3. DFR Pacific (DFR-P)  
Building 11, Room 211  
Camp H.M. Smith, HI 96861-5010  
  
Phone: DSN (315) 477-6692  
COM (808) 477-6792  
FAX (808) 477-5710

(DESC 52.246-9F45)

**E28 CONTRACTOR INSPECTION RESPONSIBILITIES (STORAGE) (DESC NOV 1991)**

(a) Inspection and tests by the Government of services, facilities, and equipment specified within this contract does not relieve the Contractor from responsibility to meet all requirements of the contract.

(b) The Contractor shall furnish personnel, facilities, and equipment to accomplish the following as routine procedures:

(1) "Sampling of storage tanks and loaded shipping containers in accordance with ASTM D 4057, Manual Sampling of Petroleum Products";

(2) Retaining of product composite samples from loaded shipping containers as follows:

<u>METHOD OF SHIPMENT</u>	<u>MINIMUM QUANTITY</u>	<u>MINIMUM RETENTION PERIOD</u>
Pipeline	20 Liters	60 days
Tanker/Barge		
Parcel Composite	20 Liters	90 days
Each compartment	0.5 Liters	90 days
Tank Truck/Car	1 Liter	15 days

(3) Determining presence of water in storage tanks and loaded shipping containers. Ensure that accurate water cuts are obtained by means of a water indicating paste conforming to MIL-W-83779B. Two suggested sources are Stewart Hall Chemical Testmaster Water Indicating Paste) or Sartomer (Sar Gel Water Indicating Paste):

(4) Determining Density at 15°C or API gravity of products by ASTM D 1298 or ASTM D 4052;

(5) Determining the temperature of products by ASTM D 1086;

(6) Determining the appearance of products using ASTM D 4176 and color. For distillate fuel (F76 and DF2), determine the ASTM color by ASTM D 1500 (see note below);

(7) Determining the flash point of applicable fuels and lubricants as required by the applicable product specification;

(8) Conversion of gross to net gallonage (liters);

(9) Determining the percentage (volume) of fuel system icing inhibitor by means of a portable refractometer. One suggested source is H.B. Industries, Inc., Glenview, IL 60025 (B/2 Anti-Icing additive test kit) (see note below); and

(10) Determining the range of fuel electrical conductivity by ASTM D 2624. Suggested source for a conductivity meter is Emcee Electronics, Inc., Sarasota, FL 33581 (Model 1152) (see NOTE below).

NOTE: The Contractor shall permit the Quality Representative unrestricted use of this equipment and ancillary supplies.

(c) The Contractor shall furnish hereunder, from time to time, at the request of, and in the manner and to the place designated by, the Quality Representative, samples representative of the product in each storage tank or product shipped or received. Sample size will be 2 gallons for gasoline type fuels and for jet or diesel fuels either 1 gallon or 10 gallons. The number of samples to be furnished during any 12-month period shall not exceed eight times the number of tanks specified in the contract. Such samples shall be packed, marked, and shipped by the Contractor, shipping expense prepaid, in containers and shipping boxes furnished by the Contractor. Sample containers shall be epoxy coated on the interior. This requirement is in addition to sampling required by the TESTING OF PETROLEUM PRODUCTS clause. (DESC 52.246-9FE1)

#### **E34 TEST FOR SULFIDES IN WATER (DESC MAY 1987)**

(a) **SCOPE.** This method describes a procedure for determining the presence of hydrogen sulfide, which is sometimes formed as a result of bacterial action on the sulfates contained in water bottoms in fuel storage tanks.

(b) **APPARATUS.** 250 ml conical flask.

(c) **MATERIALS.**

(1) Dilute (10%) chemically pure sulfuric or hydrochloric acid.

(2) Lead acetate paper.

(d) **SAMPLES.** Representative water samples from storage tank bottoms must be taken in a glass bottle. In some cases it will be necessary to take the water sample in a Bacon bomb sampler. Samples so taken will always be transferred to a glass bottle. To preclude oxidation by air, the filled bottle must be capped immediately. The sample should be tested as soon as possible after sampling to minimize possible changes in the composition of materials in the water.

(e) **PROCEDURE.**

(1) The sample must be shaken thoroughly just prior to performing the test to make certain that any sediment present is included in the portion of the sample to be tested.

(2) Transfer 100 ml of the shaken sample into a conical flask. Add 20 ml of dilute (10%) chemically pure sulfuric or hydrochloric acid to the flask. Immediately place a piece of lead acetate paper folded in a "V" shape in the neck of the flask. Bring the water to a boil and continue to gently boil for three or four minutes.

(f) **REPORT.** The presence of sulfides in the sample will be reported if the lead acetate paper shows a black or brown discoloration. (DESC 52.246-9FN5)

**E36 INSPECTION (STORAGE) (DESC FEB 1970)**

The facilities to be provided hereunder shall be ready for inspection and acceptance by \_\_\_\_\_. The Contractor shall notify the Contracting Officer of the date such tanks and facilities are available for inspection and acceptance, and the Contracting Officer, or his designated representative, shall promptly thereafter inspect such tanks and facilities. No payment will be made for services performed or facilities provided prior to \_\_\_\_\_.

(DESC 52.246-9FD5)

**E50 RESPONSIBILITY FOR SUPPLIES (APR 1984)**

(a) Title to supplies furnished under this contract shall pass to the Government upon formal acceptance, regardless of when or where the Government takes physical possession, unless the contract specifically provides for earlier passage of title.

(b) Unless the contract specifically provides otherwise, risk of loss of or damage to supplies shall remain with the Contractor until, and shall pass to the Government upon--

(1) Delivery of the supplies to a carrier, if transportation is f.o.b. origin; or

(2) Acceptance by the Government or delivery of the supplies to the Government at the destination specified in the contract, whichever is later, if transportation is f.o.b. destination.

(c) Paragraph (b) above shall not apply to supplies that so fail to conform to contract requirements as to give a right of rejection. The risk of loss of or damage to such nonconforming supplies remains with the Contractor until cure or acceptance. After cure or acceptance, paragraph (b) above shall apply.

(d) Under paragraph (b) above, the Contractor shall not be liable for loss of or damage to supplies caused by the negligence of officers, agents, or employees of the Government acting within the scope of their employment.

(FAR 52.246-16)

**SECTION F - DELIVERIES OR PERFORMANCE**

**F1.04 GENERAL RECEIVING AND STORING CONDITIONS (DESC OCT 1997)**

(a) Notice will be furnished to the Contractor of upcoming product receipts. The notice will include the method of receipt, the source, grade, or type of product, and any special instructions.

(b) The Contractor shall transfer and store each grade of product in a manner that preserves the quality of the product and will prevent contamination. The responsibility for preventing contamination rests with the Contractor.

(c) When requested, the Contractor will transfer product between tanks to consolidate like types or grades.

(d) Whenever a product is to be removed from a tank to accomplish cleaning or repair of the tank, or to change product, or to effect the release of the tank to the Contractor, the Contractor shall strip such tank to preclude loss of recoverable fuel. The Contractor shall provide the Quality Assurance Representative (QAR) with



information pertaining to the amount of fuel deemed unrecoverable, the reason why the fuel cannot be recovered, and an analysis of the unrecovered fuel quality. All unrecoverable tank bottoms/line fill quantities will be reported to the Property Administrator for disposition instructions. Contaminated/off-specification product will be reported to the QAR in order to obtain disposition instructions. Tanks out of service for repair shall be removed from revenue until such time as they are returned to Government Service. Tanks out of service for cleaning shall be governed by the INSPECTION AND CLEANING OF BULK PETROLEUM STORAGE TANKS clause.

(e) Custody of product received by pipeline, and risk of loss thereof, shall pass from the carrier to the Contractor when the product passes the flange connecting the carrier's pipeline and the Contractor's pipeline.

(f) Custody of product received by transport truck, and risk of loss thereof, shall pass from the carrier to the Contractor when the product passes from the transport truck discharge hoses into the Contractor's receiving facilities.

(g) Custody of product received by tank car, and risk of loss thereof, shall pass from the carrier to the Contractor when the tank car comes to rest on the Contractor's siding.

(h) Custody of product received from tanker or barge, and risk of loss thereof, shall pass from the carrier to the Contractor when the fuel passes the vessel's permanent hose connection.

(i) The Contractor shall be held accountable for demurrage charges arising from delay(s) in receipt by tank cars or transport trucks, except when the delay(s) are caused by reason beyond the control and without the fault or negligence of the Contractor and its subcontractors.

(j) The Contractor will prepare and process the following certificate on bond paper when it is necessary to upgrade or downgrade a product:

I certify that \_\_\_\_\_ gallons of \_\_\_\_\_ have been  
upgraded/downgraded

(quantity)

(product)

from \_\_\_\_\_ to \_\_\_\_\_. This action was required because

(product)

(product)

\_\_\_\_\_  
(enter reason for the action)

\_\_\_\_\_  
Signature of Contractor Representative

[ ] I concur with the Contractor's certification.

[ ] I do not concur with the Contractor's certification for the following reasons:

\_\_\_\_\_  
Signature of Quality Representative

(A receipt transaction will be reflected on the monthly stock report for the gain in product, with a shipment being reflected for the losing product.)

(k) The following subparagraphs apply only to barges and tankers.

(1) **SCHEDULED ARRIVAL DATE AND BASIC ALLOWED LAYTIME.**

(i) The Contractor shall be notified in advance of the scheduled arrival date. Each notice will specify the quantity to be delivered, the cargo number, the name of the vessel, and the scheduled arrival date. For tankers, the notice will also include the size of the vessel and the expected time of arrival. For tankers, the notice of delivery will be furnished at least 72 hours in advance of the scheduled arrival date; for barges, at least 48 hours in advance of the scheduled arrival date. The Government will provide the maximum notice practicable when the anticipated vessel transit time from the loading point is less than the 72/48 hours. Changes in the scheduled arrival date that will provide less than the 48 hours notice for barges and the 72 hours notice for tankers will require the verbal approval of the Contractor. This verbal approval is to be confirmed in writing as soon as practicable.

(ii) The Contractor shall provide a reachable berth, free of charge, where the vessel can be safely moored and afloat with necessary access thereto as soon as possible, but no later than, for barges, within 3 hours after issue of notice of readiness to unload, and, for tankers, within 6 hours after issue of notice of readiness, PROVIDED --

(A) If the vessel is tendered for unloading on a date earlier than the last agreed scheduled arrival date, the Government's vessel shall be unloaded as soon as possible in its proper turn with other vessels, and laytime shall not commence until the vessel moors alongside or, for barges, 3:00 A.M. local time; for tankers, 6:00 A.M. local time, on the last agreed scheduled arrival date, whichever occurs first.

(B) If the vessel is tendered for unloading later than 12:00 noon of the day following the last scheduled arrival date, the vessel shall be unloaded in its proper turn with other vessels. Laytime shall commence when the vessel moors alongside, provided a good faith effort is made by the Contractor to moor the vessel in its turn with other vessels as loading berths become available.

(iii) Laytime shall commence either (A) at the expiration of the notice period prescribed in subparagraph (ii) above, berth or no berth, or (B) immediately when the vessel moors alongside, with or without notice of readiness, whichever occurs first.

(iv) Laytime, once started, shall continue 24 hours per day, 7 days per week, without interruption, from its commencement until unloading of the barge or tanker is completed and hoses have been disconnected.

(v) Unless otherwise provided in the Schedule, the Contractor shall be allowed and will complete unloading within laytime determined as follows:

(A) **FOR BARGES:** One hour for each 2,000 barrels of product to be unloaded.

(B) **FOR TANKERS:** Thirty-six hours of discharge of a full vessel cargo. When partial vessel cargoes are to be unloaded, the 36 hours will be prorated based on quantities discharged in each port.

(vi) Hoses and loading arms for unloading a barge or tanker will be furnished, connected, and disconnected by the Contractor.

**(2) INCREASES TO BASIC ALLOWED LAYTIME.**

(i) If, after laytime commences, the conditions or facilities of the barge or tanker to be unloaded do not permit unloading, basic allowed laytime shall be increased by the duration of the delay.

(ii) If the vessel is delayed in reaching its berth and the delay is caused by the fault of the vessel, basic allowed laytime shall be increased by the duration of the delay.

(iii) If the vessel owner's or operator's regulations prohibit unloading at any time after laytime has commenced, the lost time shall be added to the basic allowed laytime.

(iv) If, for any reason, the Contractor is delayed in unloading the barge or tanker because of actions of a Government representative, acting under the contract, that arise through no fault or negligence on the part of the Contractor or its subcontractors, basic allowed laytime shall be increased by the duration of the delay.

(v) There will be no increase to basic allowed laytime (nor other reductions to any resulting demurrage time) for saved laytime arising out of other loadings/discharges.

(vi) Delays, after commencement of laytime, attributed to causes beyond the control and without the fault or negligence of the Contractor or the U.S. Government will result in increasing the basic allowed laytime by one half of the delay time.

**(3) PAYMENT OF DEMURRAGE.** For all hours of laytime which elapse in excess of the basic allowed laytime for unloading provided for by subparagraph (k)(1)(v), or as otherwise provided in the Schedule, the Contractor shall pay demurrage to the Government as follows:

(i) **USS, USNS, OR TIME CHARTERED VESSELS.** At the demurrage rate for the vessel loaded computed to the nearest whole hour as published by the Military Sealift Command and in effect on the date the loading of the vessel is completed.

(ii) **VOYAGE CHARTERED VESSELS.** At the demurrage rate cited in the charter, except that the demurrage payable by the Contractor shall in no event exceed the demurrage expense incurred by the Government under the Charter.

(DESC 52.211-9FJ5)

**F1.05 GENERAL SHIPPING CONDITIONS (DESC OCT 1997)**

(a) The Contractor will prepare the inspection and shipment documents covering deliveries made from the terminal in accordance with instructions contained in the Documentation and Product Property Control Plan. Normally, the document will consist of DD Form 250 for tank car, tank truck, pipeline, and packaged shipments, and DD Form 250-1 and ullage/innage reports in the case of barge and tanker shipments. The Contractor will distribute the DD Forms 250 and the Quality Representative (QR) will distribute the DD Forms 250-1. When the QR is not present for release or shipment of product inspected at these facilities, and the Contractor's quality control program has been approved by the responsible Government Quality Office in accordance with paragraph 246.471 of the DOD FAR Supplement, the Contractor will insert the following certification on the inspector's copy of the shipping documents:

"I certify that the above supplies were (a) in the quantity indicated, (b) taken from Government-owned and approved stocks, and (c) loaded into inspected and approved containers. This shipment was released in accordance with paragraph 246.471-2 of the DOD FAR Supplement under authorization of (NAME and TITLE OF THE AUTHORIZED REPRESENTATIVE OF THE CONTRACT ADMINISTRATION OFFICE) in a letter dated (DATE OF AUTHORIZING LETTER). (SIGNATURE AND TITLE OF CONTRACTOR'S DESIGNATED REPRESENTATIVE)."

(b) Shipment of products hereunder will be made only pursuant to a "release" furnished by the Product Property Administrator or his designated representative. The "release" will indicate the consignees who are authorized to issue "calls" or "orders" for shipment of product. Such "release" will be periodically furnished to the Contractor by the cognizant Product Property Administrator.

(c) Conveyances required for shipments shall be furnished or designated by the Government. The Contractor shall inspect all shipping conveyances prior to loading to insure that product loaded will not be lost or contaminated by the condition of the equipment. Tank truck inspection must be performed by qualified Contractor personnel. Delegation of this responsibility shall not be passed to the tank truck operator/driver. The tank truck operator/driver may be permitted to physically load the tank truck; however, the loading operation must be under the surveillance and direction of Contractor personnel. Equipment found to be unsatisfactory shall be reported as follows: (1) TANKERS AND BARGES. Report immediately by telephone to the QR; if not present, the master of the tanker or barge or to the carrier's agent or general office; (2) TANK CARS. Report to the QR and by wire (Government Rate, Collect) to Commander, Eastern Area, Military Traffic Management Command, ATTN: MTE-INR-O, Brooklyn, NY 11250. Any shortage or overage of tank cars shall be similarly reported; (3) TRANSPORT TRUCKS. Contractor shall expeditiously report to the Traffic Manager of the appropriate Defense Fuel Region, Government QR, and to the carrier's terminal where equipment is domiciled.

(d) Except when loading barges or tankers, or making pipeline deliveries, strainers of 100 mesh or finer shall be utilized in loading aviation fuels and jet lubricating oil and 60 mesh or finer in the case of reciprocating engine oil. Strainers shall be located as near the loading point as practicable. Contractor shall furnish and periodically inspect and clean such strainers and repair same, if necessary, keeping a written record thereof.

(e) Contractor shall affix serially numbered seals to the dome covers of tank cars and all openings in the case of tank trucks in such a manner that entry could only be gained by breaking a seal. Such seals will be furnished by the Contractor. Seal numbers will be indicated on shipping documents.

(f) Placards, as required by 49 CFR 172.506 and 49 CFR 172.508, shall be furnished and affixed to all tank cars and tank trucks by Contractors unless placards are already affixed.

**(g) FOR TANK CARS ONLY.**

(1) If Government-owned or leased tank cars are furnished, the Contractor will maintain records showing each day a car is received or forwarded by car number and will furnish the information to the Defense Fuel Regional Office upon request.

(2) Bottom outlet gaskets and manway cover gaskets, when required due to deterioration or loss, shall be furnished and applied to tank cars by the Contractor.

(3) The Contractor shall (i) inspect empty Government-owned tank cars located on the Contractor's premises and (ii) ship tank cars located on the Contractor's premises to repair facilities as directed by the Government.

(h) Unless otherwise directed, the Contractor shall prepare and distribute Government bills of lading utilized in shipments. Such bills of lading, routing instructions, and transportation assistance will be furnished by the Defense Fuel Region placing orders.

(i) The Contractor shall comply with routing instructions furnished by the Government. Such instruction will include names, routes, route order numbers, and other pertinent information. The Contractor shall be responsible for scheduling of commercial transport trucks, trucks and trailer, and tank wagons to its plant in accordance with such routing instructions and consonant with the applicable order. The Contractor shall provide sufficient advance notice to carriers and schedule the carrier's equipment for loading. The Contractor shall reimburse the Government for any demurrage incurred as a result of improper scheduling.

(j) Custody of product shipped by pipeline, and risk of loss thereof, shall pass from the Contractor to the carrier when the product passes the flange connecting the Contractor's pipeline and the carrier's pipeline.

(k) Custody of product shipped by transport truck, and risk of loss thereof, shall pass from the Contractor to the carrier when the loaded transport truck is released for shipment by the Contractor.

(l) Custody of product shipped by tank car, and risk of loss thereof, shall pass from the Contractor to the carrier when the loaded tank car is picked up by the carrier.

(m) Custody of product delivered to tanker or barge, and risk of loss thereof, shall pass from the Contractor to the carrier when the fuel passes the vessel's permanent hose connection.

(n) The Contractor shall be held accountable for demurrage charges arising from delay(s) in shipment by tank cars and transport trucks except when those delays are caused by reasons beyond the control and without the fault or negligence of the Contractor and its subcontractors.

(o) The following subparagraphs only apply to barges and tankers.

**(1) SCHEDULED ARRIVAL DATE AND BASIC ALLOWED LAYTIME.**

(i) Notice shall be furnished to the Contractor in advance of the date on which loading is to be made, which date is hereinafter referred to as the "Scheduled Arrival Date." Each notice will specify the quantity to be loaded, the cargo number, and name of the vessel and the scheduled loading date. For tankers, notice will also include the size of the vessel and the expected time of arrival. Notice of delivery will be furnished at least 72 hours in advance of the scheduled arrival date for tankers, and at least 48 hours in advance of the scheduled arrival date for barges. When anticipated vessel transit time to the loading point is less than 72/48 hours, the Government will provide the maximum notice practicable. Any change in the scheduled arrival date of less than 48 hours notice for barges and 72 hours notice for tankers will require verbal approval of the Contractor, confirmed in writing..

(ii) The Contractor shall provide as soon as possible, but within 3 hours after issue of notice of readiness to load from a barge and within 6 hours after the Contractor receives notice of readiness to load from a tanker, a reachable berth, free of cost to the Government, where the vessel can be safely moored and afloat with necessary access thereto PROVIDED, however --

(A) If the vessel is tendered for loading on a date earlier than the last agreed scheduled arrival date, the Government's vessel shall be loaded as soon as possible in its proper turn with other vessels, and laytime shall not commence until the vessel moors alongside or, for barges, 3:00 A.M. local time; for tankers, 6:00 A.M. local time, on the last agreed scheduled arrival date, whichever occurs first.

(B) If the vessel is tendered for loading later than 12:00 noon of the day following the last scheduled arrival date, the vessel shall be loaded in its proper turn with other vessels. Laytime shall commence when the vessel moors alongside, provided a good faith effort is made by the Contractor to moor the vessel in its turn with other vessels as loading berths become available. If the vessel is not moored in its proper turn with other vessels, laytime will commence at 6:00 A.M. on the date the Government vessel's turn occurred.

(iii) Laytime shall commence either (A) at the expiration of the notice period prescribed in subparagraph (ii) above, berth or no berth, or (B) immediately when the vessel moors alongside, with or without notice of readiness, whichever occurs first.

(iv) Laytime, once started, shall continue 24 hours per day, 7 days per week, without interruption, from its commencement until loading of the barge or tanker is completed and hoses have been removed.

(v) Unless otherwise provided in the Schedule, the Contractor shall be allowed and will complete unloading within laytime determined as follows:

(A) **FOR BARGES:** One hour for each 2,000 barrels of product to be loaded.

(B) **FOR TANKERS:** Thirty-six hours for load of full vessel cargo. When partial vessel cargoes are to be loaded, the 36 hours will be prorated based on quantities loaded by each supplier. The 36 hours includes allowances for routine events that occur in the loading process, such as cushioning and topping off of vessel tanks.

(vi) Hoses and loading arms for loading shall be furnished, connected, and disconnected by the Contractor.

**(2) INCREASES TO BASIC ALLOWED LAYTIME.**

(i) If, after laytime commences, the conditions or facilities of the barge or tanker to be loaded do not permit loading, basic allowed laytime shall be increased by the duration of the delay.

(ii) If the vessel is delayed in reaching its berth and the delay is caused by the fault of the vessel, basic allowed laytime shall be increased by the duration of the delay.

(iii) After laytime commences, when vessels are required to dock at anchorage due to vessel delays such as vessel inspection and inerting, laytime credit will be allowed for transit time from anchors away at anchorage until first line ashore berthing, not to exceed 2 hours.

(iv) If regulations of the owner or operator of the vessel prohibit loading at any time after laytime has commenced, time so lost shall be added to basic allowed laytime.

(v) If, for any reason, the Contractor is delayed in loading the barge or tanker because of actions of a Government representative, acting under the contract, that arise through no fault or negligence on the part of the Contractor or its subcontractors, basic allowed laytime shall be increased by the duration of the delay.

(vi) There will be no increase to basic allowed laytime (nor other reductions to any resulting demurrage time) for saved laytime arising out of other loadings/discharges.

(vii) Delays, after commencement of laytime, attributed to causes beyond the control and without the fault or negligence of the Contractor or the U.S. Government will result in increasing the basic allowed laytime by one half of the delay time.

**(3) PAYMENT OF DEMURRAGE.** For all hours of laytime which elapse in excess of the basic allowed laytime for loading provided for by paragraph (1) above, or as otherwise provided in the Schedule, the Contractor shall pay demurrage to the Government as follows:

(i) **USS, USNS, OR TIME CHARTERED VESSELS.** At the demurrage rate for the vessel loaded computed to the nearest whole hour as published by the Military Sealift Command and in effect on the date the loading of the vessel is completed.

(ii) **VOYAGE CHARTERED VESSELS.** At the demurrage rate cited in the charter, except that the demurrage payable by the Contractor shall in no event exceed the demurrage expense incurred by the Government under the Charter.

(DESC 52.247-9FP1)

**F1.14 DETERMINATION OF QUANTITY (STORAGE) (DESC NOV 1997)**

The total gallonage received into or shipped from the Contractor's facilities shall be determined as follows:

(a) **RECEIPTS OR SHIPMENTS OF CRUDE AND FUELS OTHER THAN RESIDUAL FUELS** (by transport truck of 3500 gallons or less) (truck and trailer combination when delivering same product will be considered as one container or conveyance). On an actual gallonage basis, without temperature correction.

(b) **RECEIPTS OR SHIPMENTS OF RESIDUAL FUELS** (in excess of 3500 gallons of crude or other fuels by tank car or transport truck). On a gallonage basis corrected to 60°F.

(c) **RECEIPTS OR SHIPMENTS BY TANKER OR BARGE OR PIPELINE.** On a gallonage basis corrected to 60°F. Quantities shipped or received will be determined on the basis of shore tanks or tender gauges taken by the Contractor and authenticated by the Quality Representative (QR). The ship or carrier's representative may participate in these determinations. During the gauging of shore tanks, the tanker, barge, or carrier's representative may participate in the quantity determinations, and, in the case of tanker/barge shipments or receipts, the Contractor may participate in the operations on board the tanker or barge which are required to determine the quantity of product in the tanker or barge cargo tanks.

(d) In the case of receipts, the Contractor shall sign the bill of lading and other related documents for the actual quantity received as determined above. When requested by the QR, the Contractor shall investigate losses or gains in connection with receipts or shipments to determine if the cause is at the Contractor's facility.

(e) **MEASUREMENT STANDARDS.** All measurements and calibrations made to determine quantity shall be in accordance with the most recent edition of the API Manual of Petroleum Measurement Standards (MPMS). Outside the United States, other technically equivalent national or international standards may be used. In addition, the following specific standards will be the referee method.

(1) **API MPMS Chapter 11.1, Volume Correction Factors (API 2540/ASTM D 1250/IP 200/ISO 91-1).** Either the printed version or the computer subroutine version of the standard may be used. In case of disputes, the computer subroutine will be the referee method.

(i) For crude oils, JP4, and Jet B, use Volume I, Tables 5A and 6A (or Volume VII Tables 53A and 54A).

(ii) For lubricating oils, use Volume XIII, Tables 5D and 6D (or Volume XIV, Tables 53D and 54D).

(iii) For all other fuels and fuel oils, use Volume II, Tables 5B and 6B (or Volume VIII, Tables 53B and 54B).

(iv) For chemicals/additives, use Volume III, Table 6C (or Volume IX, Table 54C), or volume correct in accordance with the product specification.

(v) Volume XII, Table 52, shall be used to convert cubic meters at 15°C to barrels at 60°F. Convert liters at 15°C to cubic meters at 15°C by dividing by 1,000. Convert gallons at 60°F to barrels at 60°F by dividing by 42. Should foreign law restrict conversion by this method, the method required by law shall be stated in the offer.

(vi) If the original measurement is by weight and quantity is required in U.S. gallons, then--

(A) Volume XII, Table 58, shall be used to convert metric tons to U.S. gallons at 60°F/ Convert kilograms to metric tons by dividing by 1,000.

(B) Volume XI, Table 8, shall be used to convert pounds to U.S. gallons at 60°F.

(2) **API MPMS Chapter 4, Providing Systems.** All meters used in determining product volume shall be calibrated using this standard with the frequency required by local regulations (foreign or domestic). If no local regulation exists, then the frequency of calibration shall be that recommended by the meter manufacturer or every 6 months, whichever is more frequent.

(3) **API MPMS Chapter 12, Calculation of Petroleum Quantities.** All calculations of net quantities shall be made in accordance with this chapter.

(f) In addition to gauging of storage tanks to determine quantities issued or received, the Contractor will gauge each active storage tank daily and each inactive storage tank weekly and compute physical inventories for the purpose of detecting loss of products. (DESC 52.211-9FG1)

#### **F52.11 DEBALLASTING (DESC JAN 1990)**

Deballasting facilities and services will be made available upon request to all vessels loading cargo under this contract. Contractors who neither own nor operate deballasting facilities and services will be responsible for arranging for their availability at the loading facility. Deballasting facilities will be provided at no additional charge to the Government.

(DESC 52.247-9FB1)

#### **F76 CONTRACT PERIOD/PERFORMANCE REQUIREMENTS (STORAGE) (DESC DEC 1991)**

During the contract period, \_\_\_\_\_ through \_\_\_\_\_, the Contractor shall provide petroleum storage facilities and services at the following location:

\_\_\_\_\_  
(Street address)

\_\_\_\_\_  
(City/State/Zip)

(DESC 52.242-9FA1)

**F107 STOP-WORK ORDER (AUG 1989)**

(a) The Contracting Officer may, at any time, by written order to the Contractor, require the Contractor to stop all, or any part, of the work called for by this contract for a period of 90 days after the order is delivered to the Contractor, and for any further period to which the parties may agree. The order shall be specifically identified as a stop-work order issued under this clause. Upon receipt of the order, the Contractor shall immediately comply with its terms and take all reasonable steps to minimize the incurrence of costs allocable to the work covered by the order during the period of work stoppage. Within a period of 90 days after a stop-work order is delivered to the Contractor, or within any extension of that period to which the parties shall have agreed, the Contracting Officer shall either--

(1) Cancel the stop-work order; or

(2) Terminate the work covered by the order as provided in the DEFAULT, or the TERMINATION FOR CONVENIENCE OF THE GOVERNMENT, clause of this contract.

(b) If a stop-work order issued under this clause is canceled or the period of the order or any extension thereof expires, the Contractor shall resume work. The Contracting Officer shall make an equitable adjustment in the delivery schedule or contract price, or both, and the contract shall be modified, in writing, accordingly, if--

(1) The stop-work order results in an increase in the time required for, or in the Contractor's cost properly allocable to, the performance of any part of this contract; and

(2) The Contractor asserts its right to the adjustment within 30 days after the end of the period of work stoppage; PROVIDED, that, if the Contracting Officer decides the facts justify the action, the Contracting Officer may receive and act upon the claim submitted at any time before final payment under this contract.

(c) If a stop-work order is not canceled and the work covered by the order is terminated for the convenience of the Government, the Contracting Officer shall allow reasonable costs resulting from the stop-work order in arriving at the termination settlement.

(d) If a stop-work order is not canceled and the work covered by the order is terminated for default, the Contracting Officer shall allow, by equitable adjustment or otherwise, reasonable costs resulting from the stop-work order.

(FAR 52.242-15)

**SECTION G - CONTRACT ADMINISTRATION**

**G1 POSTAWARD CONFERENCE (DEC 1991)**

The Contractor agrees to attend any postaward conference convened by the contracting activity or contract administration office in accordance with Federal Acquisition Regulation Subpart 42.5.

(DFARS 252.242-7000)

**G3 INVOICE NUMBERING REQUIREMENTS (DESC AUG 1998)**

Each invoice submitted for payment under this contract shall be identified by an individual invoice number. The number shall not be duplicated on subsequent invoices. Duplicate invoice numbers or invoices that do not include numbers may be rejected.

(DESC 52.211-9FH5)

**G3.01 PAYMENT DUE DATE (DESC OCT 1988)**

When payment due date falls on a Saturday or Sunday, or on a United States Official Federal holiday, payment will be due and payable on the following workday.

(DESC 52.232-9F45)

**G9.07 ELECTRONIC TRANSFER OF FUNDS PAYMENTS - CORPORATE TRADE EXCHANGE (DESC MAY 1999)**

(a) This clause applies to payments made by DFAS Columbus.

(b) *The Contractor shall supply the following information to the Contracting Officer no later than 3 days after contract award.*

NAME OF RECEIVING BANK: \_\_\_\_\_  
\_\_\_\_\_

(DO NOT EXCEED 29 CHARACTERS)

CITY AND STATE OF RECEIVING BANK: \_\_\_\_\_

(DO NOT EXCEED 20 CHARACTERS)

AMERICAN BANKERS ASSOCIATION NINE DIGIT IDENTIFIER OF RECEIVING BANK: \_\_\_\_\_  
\_\_\_\_\_

ACCOUNT TYPE CODE: (Contractor to designate one)

☐ CHECKING TYPE 22

☐ SAVINGS TYPE 32

RECIPIENT'S ACCOUNT NUMBER ENCLOSED IN PARENTHESES: \_\_\_\_\_  
↓

(DO NOT EXCEED 15 CHARACTERS)

RECIPIENT'S NAME: \_\_\_\_\_

(DO NOT EXCEED 25 CHARACTERS)

STREET ADDRESS: \_\_\_\_\_

(DO NOT EXCEED 25 CHARACTERS)

CITY AND STATE: \_\_\_\_\_

(DO NOT EXCEED 25 CHARACTERS)

**NOTE:** Additional information may be entered in **EITHER** paragraph (c) **OR** paragraph (d) below.  
Total space available for information entered in (c) **OR** (d) is 153 characters.

(c) **SPECIAL INSTRUCTIONS/OTHER IDENTIFYING DATA:**

\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_

(DO NOT EXCEED 153 CHARACTERS)

OR

(d) **THIRD PARTY INFORMATION:** Where payment is to be forwarded from the receiving bank to another financial institution for deposit into Contractor's account, the following information **must** be supplied by the Contractor: Second Bank Name, City/State and/or Country, Account Number, and Account Name.





(d) **SUSPENSION OF PAYMENT.** If the Contractor's EFT information in the CCR database is incorrect, then the Government need not make payment to the Contractor under this contract until correct EFT information is entered into the CCR database; and any invoice or contract financing request shall be deemed not to be a proper invoice for the purpose of prompt payment under this contract. The prompt payment terms of the contract regarding notice of an improper invoice and delays in accrual of interest penalties apply.

(e) **CONTRACTOR EFT ARRANGEMENTS.** The Contractor has identified multiple payment receiving points (i.e., more than one remittance address and/or EFT information set) in the CCR database, and the Contractor has not notified the Government of the payment receiving point applicable to this contract, the Government shall make payment to the first payment receiving point (EFT information set or remittance address as applicable) listed in the CCR database.

(f) **LIABILITY FOR UNCOMPLETED OR ERRONEOUS TRANSFERS.**

(1) If an uncompleted or erroneous transfer occurs because the Government used the Contractor's EFT information incorrectly, the Government remains responsible for--

- (i) Making a correct payment;
- (ii) Paying any prompt payment penalty due; and
- (iii) Recovering any erroneously directed funds.

(2) If an uncompleted or erroneous transfer occurs because the Contractor's EFT information was incorrect or was revised within 30 days of Government release of the EFT payment transaction instruction to the Federal Reserve System, and--

- (i) If the funds are no longer under the control of the payment office, the Government is deemed to have made payment and the Contractor is responsible for recovery of any erroneously direct funds; or
- (ii) If the funds remain under the control of the payment office, the Government shall not make payment and the provisions of paragraph (d) of this clause shall apply.

(g) **EFT AND PROMPT PAYMENT.** A payment shall be deemed to have been made in a timely manner in accordance with the prompt payment terms of this contract if, in the EFT payment transaction instruction released to the Federal Reserve System, the date specified for settlement of the payment is on or before the prompt payment due date, provided the specified payment date is a valid date under the rules of the Federal Reserve System.

(h) **EFT AND ASSIGNMENT OF CLAIMS.** If the Contractor assigns the proceeds of this contract as provided for in the assignment of claims terms of this contract, the Contractor shall require a condition of any such assignment that the assignee shall register in the CCR database and shall be paid by EFT in accordance with the terms of this clause. In all respects, the requirements of this clause shall apply to the assignee as if it were the Contractor. EFT information that shows the ultimate recipient of the transfer to be other than the Contractor, in the absence of a proper assignment of claims acceptable to the Government, is incorrect within the meaning of paragraph (d) of this clause.

(i) **LIABILITY FOR CHANGE OF EFT INFORMATION BY FINANCIAL AGENT.** The Government is not liable for errors resulting from changes in EFT information made by the Contractor's financial agent.

(j) **PAYMENT INFORMATION.** The payment or disbursing office shall forward to the Contractor available payment information that is suitable for transmission as of the date of release of the EFT instruction to the Federal Reserve System. The Government may request the Contractor to designate a desired format and method(s) for delivery of payment information from a list of formats and methods the payment office is capable of executing. However, the Government does not guarantee that any particular format or method of delivery is available at any particular payment office and retains the latitude to use the format and delivery method most convenient to the Government. If the Government makes payment by check in accordance with paragraph (a) of this clause, the Government shall mail the payment information to the remittance address contained in the CCR database.

(FAR 52.232-33)

**G21 DESIGNATION OF PROPERTY ADMINISTRATOR (DESC MAR 1995)**

The Property Administrator for product handled under the terms of the contract will be designated by the Commander, Defense Energy Support Center.

(DESC 52.242-9F65)

**G22 DESIGNATION OF THE DEFENSE FUEL REGION (DESC JUL 1997)**

(a) The Defense Fuel Region to which reference is made herein is the--

Commander, DFR - Pacific  
Box 64110  
Camp H.M. Smith, HI 98686-4110  
Tel: (808) 477-5710 Fax: (808) 477-1172

(b) The Defense Fuel Office to which reference is made herein is the—

Same as above.

(c) The Commander of the Defense Fuel Region or his designee, appointed above, is the authorized representative of the Commander, Defense Energy Support Center.

(DESC 52.242-9F55)

**G148.05 SUBMISSION OF INVOICES FOR PAYMENT (SERVICES) (DESC JUL 1999)**

Monthly services invoices shall be mailed directly to the Accounting and Finance Office after self-certification. All other invoices are mailed to the Contract Administration Office (CAO) after Quality Representative (QR) certification. Specific procedures follow:

(a) **MONTHLY INVOICES.** Contractors shall present invoices for monthly services (original and 3 copies) directly to the following Accounting and Finance Office within one month following the performance of the respective services:

DEFENSE FINANCE AND ACCOUNTING SERVICE - COLUMBUS CENTER  
STOCK FUND DIRECTORATE  
FUELS ACCOUNTING AND PAYMENTS DIVISION  
ATTN: DFAS-CO-LSFA  
P.O. BOX 182317  
COLUMBUS, OH 43218-6250

Each invoice will be certified by an official of the company in the following manner:

"I certify that the services were performed, that the amounts reflected hereon are in conformance with the contract, and that the amounts are correct and proper for payment."

Signature

PRINTED NAME AND TITLE

(b) **ALL OTHER INVOICES.**

- (1) Contractors shall address invoices to the Accounting and Finance Office listed in (a) above.
- (2) Contractors shall certify that the invoice is true and correct and shall attach supporting documentation (e.g., subcontractor bills or invoices) for cost reimbursement invoices.
- (3) Contractors shall then present the invoice (original and 4 copies) to the cognizant QR for certification that the invoice is true and correct to the best of the QR's knowledge and that the supplies or services included on the invoice have been provided.
- (4) Last, Contractors shall submit the invoice to the applicable CAO address below for approval and for processing to the Accounting and Finance Office for payment. Upon mutual agreement between the Contractor and the QR, the QR may submit the invoice directly to the CAO after certification.

**CONUS Contract Locations**

ATTN DESC-FPA FPB ROOM 2945  
DEFENSE ENERGY SUPPORT CENTER

CENTER

**OCONUS Contract Locations**

ATTN DESC-FPC ROOM 2945  
DEFENSE ENERGY SUPPORT

SUITE 4950  
6222

8725 JOHN J KINGMAN RD SUITE 4950  
FORT BELVOIR VA 22060-6222

8725 JOHN J KINGMAN RD  
FORT BELVOIR VA 22060-

(c) **OVERTIME.** When the Contractor is authorized by the designated Defense Energy Region (DER) to perform services in excess of normal working hours, the Government will reimburse the Contractor as described in (1) and (2) below. Each invoice for overtime will specify the number of people working, their employment classification, number of hours worked, and the hourly rate of compensation. The written authorization from the DER must be attached to the invoice. (The authorization for overtime may be given initially by telephone, but later must be provided in writing by the DER to the Contractor.) Follow instructions given in (b) above for submission of overtime invoices.

(1) **GOCO (Government-Owned, Contractor-Operated).** The Government will reimburse actual overtime labor rate paid times actual overtime hours, plus social security taxes, insurance, and fringe benefits. No profit or G&A (general and administrative expenses) will be allowed. (Profit and G&A should be included in the monthly services charge based on the dollars estimated for the overtime line item.)

(2) **COCO (Contractor-Owned, Contractor-Operated).** The Government will reimburse at the rate specified in the Schedule clause.

(DESC 52.232-9FF5)

**G150.02 COURIER DELIVERY OF INVOICES (DESC JUL 1999)**

(a) Couriers, acting on behalf of Contractors, must deliver Contractor invoices being submitted for payment to the following mailroom street address:

DEFENSE FINANCE AND ACCOUNTING SERVICE - COLUMBUS CENTER  
DFAS-CO-LSF  
3990 EAST BROAD STREET, BLDG 21  
COLUMBUS, OH 43213-1152

(b) Invoices submitted by courier to the above address will be handled in a timely manner.

(DESC 52.232-9F65)

**G150.11 SUBMISSION OF INVOICES BY FACSIMILE (DESC JUL 1999)**

**NOTE 1:** **FOR GROUND FUELS (PC&S) CONTRACTS:** This clause applies only to items for Army, Navy (including

Marines), and other DoD activities (except Air Force, Alaska, and Hawaii).

**NOTE 2:** See paragraph (c) for facsimile invoicing for DETENTION/DEMURRAGE costs.

**NOTE 3:** INVOICES WILL REFLECT QUANTITIES IN WHOLE NUMBERS AND SHALL BE ROUNDED AS

APPLICABLE. Example: 7,529.4 = 7,529 or 7,529.5 = 7,530.

(a) **IMPORTANT NOTICE:** Contractors who select the facsimile (FAX) method of invoicing prior to award in accordance with the FACSIMILE INVOICING or the FACSIMILE OR ELECTRONIC INVOICING provision must do so for all invoices. Failure to comply with the requirements of this clause will result in revocation of the Contractor's right to submit invoices by the FAX method.

(b) **INSTRUCTIONS FOR SUBMITTING INVOICES VIA FACSIMILE.**

(1) When the Contractor has elected to transmit invoices by FAX, it is responsible for validating receipt of its FAXed invoice. Because DFAS-CO-LS cannot be held accountable for transmissions not received, the Contractor must verify transmission/receipt of its FAX by telephoning Customer Service (DFAS-CO-LS) at **(800) 453-5014**. If local (Columbus Metro Area), the Customer Service number is **(614) 693-4994**. Personnel are available to verify receipt of FAXed transmissions between 8 a.m. and

5 p.m., EST/EDT, Monday through Friday, excluding Federal holidays.

(2) The DFAS-CO-LS FAX number is **(614) 693-0670**.

(3) The Contractor shall include its FAX number on each document transmitted.

(4) After transmitting the original invoice, the Contractor shall mark that invoice “**ORIGINAL INVOICE - FAXED**” and retain it. The hard copy is **not** required for payment and shall **not** be mailed to the payment office unless DFAS-CO-LS specifically requests it.

(5) **F.O.B. DESTINATION DELIVERIES.**

(i) **CERTIFICATION OF RECEIPT.**

(A) Receiving activity personnel will certify the receipt of fuel by preparing and signing one of the following documents:

(a) The SF 1449, Solicitation/Contract/Order for Commercial Items; or

(b) The DD Form 1155, Order for Supplies or Services; or

(c) The DD Form 250, Material Inspection and Receiving Report; or

(d) The DD Form 250-1, Tanker/Barge Material Inspection and Receiving Report

(for tanker and barge deliveries only).

(B) Payments to the Contractor will be based on the receipt of the "paying copies" of the receiving report to DESC-FII, Fort Belvoir, VA, and payment will be made in accordance with the terms of the contract.

(ii) **PC&S DELIVERIES.**

(A) Overbillings--

(a) That are less than or equal to 0.5 percent of the quantity listed on the receiving document will be paid as originally invoiced by the Contractor when the overbilled quantity is solely a result of a difference in measurement techniques.

(b) That exceed 0.5 percent of the quantity listed on the receiving document will be paid based on the quantity as determined by the activity and annotated on the activity's receiving document.

(B) Underbillings will be paid as invoiced.

(C) Notwithstanding any permissible variation percentage, payment is authorized for a percentage not to exceed 120 percent of the ordered quantity. Payment shall be made for quantity within this allowable variation listed on the receiving document as received and accepted by the activity and invoiced by the Contractor.

(6) **F.O.B. ORIGIN DELIVERIES - RECEIVING REPORTS.**

(i) When FAXing an **invoice** for f.o.b. origin deliveries, the Contractor shall also FAX a copy of the applicable receiving report to DESC-FII, Room 2933, Fort Belvoir, VA, for GROUND FUELS (PC&S) DELIVERIES. DESC-FII's FAX number is (703) 767-9380. The receiving report shall be transmitted no later than two working days after each delivery.

(ii) The following forms, signed by the Quality Representative (QR), are acceptable receiving reports for f.o.b. origin deliveries:

(A) DD Form 250 (Material Inspection and Receiving Report); or

(B) DD Form 250-1 (Tanker/Barge Material Inspection and Receiving Report).

(iii) The signed copy, which certifies acceptance by the QR of the product prior to submission of the invoice, will have the following information stamped, printed, or typed on it: “**ORIGINAL RECEIVING REPORT FOR PAYMENT OF INVOICE.**”

(c) **INVOICING DETENTION/DEMURRAGE COSTS VIA FACSIMILE.** Detention costs, allowable only on tank truck deliveries (not applicable to multiple drop tank truck or any tank wagon deliveries), will be the sole responsibility of the activity incurring them. Invoices for detention costs will be submitted by the Contractor via facsimile directly to the activity receiving the product. If the receiving activity is an Army activity, a copy of the detention cost invoice must also be furnished to the following address:

COMMANDER US ARMY PETROLEUM CENTER  
ATTN SATPC-L  
NEW CUMBERLAND PA 17070-5008

(DESC 52.232-9FG5)

## **SECTION H - SPECIAL CONTRACT REQUIREMENTS**

### **H11 GUARD SERVICE (DESC MAR 1982)**

(a) In the event the Government requires guard service and/or other protective services or facilities not otherwise provided by the Contractor pursuant to the terms of this contract, the Government shall have the right-

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- (1) To provide such service; or
- (2) To require the Contractor to provide such guard service; and/or
- (3) To require the Contractor to provide such other protective services or facilities.

(b) The actual cost of providing said services or facilities under (2) and/or (3) above will be for the account of the Government and will be recognized by a modification to this contract.

(DESC 52.211-9FK1)

### **H19.01 REPORTING AND CONTAINING OIL SPILLS (OVERSEAS STORAGE) (DESC JAN 1982)**

(a) Immediately upon the discovery of a product spill, leak, or seepage involving Defense Energy Support Center owned product, the Contractor shall notify, by telephone, (1) the Quality Representative; (2) the designated Defense Fuel Region; and (3) the Administrative Contracting Officer.

(b) Immediately upon discovery of a product spill, leak, or seepage, the Contractor shall take all practicable measures available to contain and prevent further spreading of such spill, leak, or seepage. Spill prevention and control measures taken by the Contractor will be in compliance with all applicable laws and regulations.

(DESC 52.223-9F35)

### **H20 REPORTS OF GOVERNMENT PROPERTY (MAY 1994)**

(a) The Contractor shall provide an annual report--

- (1) For all DoD property for which the Contractor is accountable under the contract;
  - (2) Prepared in accordance with the requirements of DD Form 1662, DoD Property in the Custody of Contractors, or approved substitute, including instructions on the reverse side of the form; and
  - (3) In duplicate, to the cognizant Government property administrator, no later than October 31.
- (b) The Contractor is responsible for reporting all Government property accountable to this contract, including that at subcontractor and alternate locations.

(DFARS 252.245-7001)

### **H20.03 REPORTING OF CONTRACT PERFORMANCE OUTSIDE THE UNITED STATES (MAR 1998)**

(a) **REPORTING CRITERIA.** Reporting under this clause is required for--

- (1) Offers exceeding \$10 million, if the offeror is aware at the time the offer is submitted that it or its first-tier subcontractor intends to perform any part of the contract that exceeds \$500,000 outside the United States and Canada, if that part could be performed inside the United States or Canada;
- (2) Contracts exceeding \$10 million, when any part that exceeds \$500,000 could be performed inside the United States or Canada, but will be performed outside the United States and Canada. If the information was submitted with the offer, it need not be resubmitted unless it changes; and
- (3) Contracts exceeding \$500,000, when any part that exceeds the simplified acquisition threshold in Part 2 of the FAR will be performed outside the United States, unless a foreign place of performance is-

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- (i) The principal place of performance; and
- (ii) Indicated by the offeror's entry in the PLACE OF PERFORMANCE provision of the solicitation.

(b) **SUBMISSION OF REPORTS.**

- (1) The offeror shall submit reports required by paragraph (a)(1) of this clause with its offer.
- (2) The Contractor shall submit reports required by paragraph (a)(2) of this clause to the Contracting Officer as soon as the information is known, with a copy to the addressee in paragraph (b)(3) of this clause. With respect to performance by a first-tier subcontractor, this information shall be reported, to the maximum extent practicable, at least 30 days before award of the subcontract.

(3) The Contractor shall submit reports required by paragraph (a)(3) of this clause within 10 days of the end of each Government quarter to--

Deputy Director of Defense Procurement (Foreign Contracting)  
OUSD(A&T)DP(FC)  
Washington, DC 20301-3060

(4) The Offeror/Contractor shall submit reports on DD Form 2139, Report of Contract Performance Outside the United States. Computer-generated reports are acceptable, provided the report contains all information required by DD Form 2139. Copies of DD Form 2139 may be obtained from the Contracting Officer.

(c) **FLOWDOWN REQUIREMENTS.**

(1) The Contractor shall include a clause substantially the same as this one in all first-tier subcontracts exceeding \$500,000, except subcontracts for commercial items, construction, ores, natural gases, utilities, petroleum products and crudes, timber (logs), or subsistence.

(2) The Contractor shall provide the prime contract number to subcontractors for reporting purposes.

(d) **INFORMATION REQUIRED.** Information to be reported on the part of this contract performed outside the United States (or outside the United States and Canada for reports required by subparagraphs (a)(1) and (a)(2) of this clause) includes that for--

- (1) Subcontracts;
- (2) Purchases; and
- (3) Intracompany transfers when transfers originate in a foreign location.

(DFARS 252.225-7026)

**SECTION I - CONTRACT CLAUSES**

**II DEFINITIONS (OCT 1995)**

As used throughout this contract, the following terms shall have the meaning set forth below.

(a) **Head of the agency** (also called **agency head**) or **Secretary** means the Secretary (or Attorney General, Administrator, Governor, Chairperson, or other chief official, as appropriate) of the agency, including any deputy or assistant chief official of the agency; and the term **authorized representative** means any person, persons, or board (other than the Contracting Officer) authorized to act for the head of the agency or Secretary.

(b) **Commercial component** means any component that is a commercial item.

(c) **Commercial item** means--

(1) Any item, other than real property, that is of a type customarily used for nongovernmental purposes and that--

- (i) Has been sold, leased, or licensed to the general public; or
- (ii) Has been offered for sale, lease, or license to the general public;

(2) Any item that evolved from an item described in subparagraph (c)(1) of this clause through advances in technology or performance and that is not yet available in the commercial marketplace, but will be available in the commercial marketplace in time to satisfy the delivery requirement under a Government solicitation;

(3) Any item that would satisfy a criterion expressed in subparagraph (c)(1) or (c)(2) of this clause, but for--

- (i) Modifications of a type customarily available in the commercial marketplace; or
- (ii) Minor modifications of a type not customarily available in the commercial marketplace

made to meet Federal Government requirements. **Minor** modifications means modifications that do not significantly alter the nongovernmental function or essential physical characteristics of an item or component, or change the purpose of a process. Factors to be considered in determining whether a modification is minor include the value and size of the modification and the comparative value and size of the final product. Dollar values and percentages may be used as guideposts, but are not conclusive evidence that a modification is minor;

(4) Any combination of items meeting the requirements of subparagraph (c)(1), (2), (3), or (5) of this clause that are of a type customarily combined and sold in combination to the general public;

(5) Installation services, maintenance services, repair services, training services, and other services if such services are procured for support of an item referred to in subparagraph (c)(1), (2), (3), or (4) of this clause, and if the source of such services--

(i) Offers such services to the general public and the Federal Government contemporaneously and under similar terms and conditions; and

(ii) Offers to use the same work force for providing the Federal Government with such services as the source uses for providing such services to the general public;

(6) Services of a type offered and sold competitively in substantial quantities in the commercial marketplace based on established catalog or market prices for specific tasks performed under standard commercial terms and conditions. This does not include services that are sold based on hourly rates without an established catalog or market price for a specific service performed;

(7) Any item, combination of items, or service referred to in subparagraphs (c)(1) through (c)(6), notwithstanding the fact that the item, combination of items, or service is transferred between or among separate divisions, subsidiaries, or affiliates of a Contractor; or

(8) A nondevelopmental item, if the procuring agency determines the item was developed exclusively at private expense and sold in substantial quantities, on a competitive basis, to multiple State and local Governments.

(d) **Component** means any item supplied to the Federal Government as part of an end item or of another component.

(e) **Nondevelopmental item** means--

(1) Any previously developed item of supply used exclusively for governmental purposes by a Federal agency, a State or local government, or a foreign government with which the United States has a mutual defense cooperation agreement;

(2) Any item described in subparagraph (e)(1) of this definition that requires only minor modification or modifications of a type customarily available in the commercial marketplace in order to meet the requirements of the procuring department or agency; or

(3) Any item of supply being produced that does not meet the requirements of subparagraph (e)(1) or (e)(2) solely because the item is not yet in use.

(f) **Contracting Officer** means a person with the authority to enter into, administer, and/or terminate contracts and make related determinations and findings. The term includes certain authorized representatives of the Contracting Officer acting within the limits of their authority as delegated by the Contracting Officer.

(g) Except as otherwise provided in this contract, the term **subcontracts** includes, but is not limited to, purchase orders and changes and modifications to purchase orders under this contract.

(FAR 52.202-1)

#### **II.01-4 DEFINITIONS (CONT'D) (STORAGE) (DESC JAN 1996)**

As used throughout this contract, the following terms shall have the meanings set forth below:

(a) **Quality Representative (QR)** includes the terms Quality Assurance Representative (QAR) and Quality Surveillance Representative (QSR).

(1) The QAR is a Government Representative authorized to represent the Contracting Officer to assure the contractor complies with the contractual requirements in furnishing petroleum products and services.

(2) The QSR is a Government Representative authorized to represent the Contracting Officer to assure the contractor complies with the contractual requirements in furnishing services.

(b) **Petroleum storage facilities** shall include --

(1) The tanks enumerated in the Schedule and all installations, fixtures, and equipment required for safe and expeditious movement of petroleum products into and out of such tanks;

(2) Fencing, flood lighting, dikes or fire walls, suitable fire fighting plan and watchman services to the extent necessary to comply with local regulations and standard commercial practices; and

(3) Whatever unloading and loading facilities that may be required to receive and ship product by the method(s) specified in the Schedule.



(c) The terms **isolated system** and **segregated system** mean a system that has a positive separation from other systems in a tank farm through the means of blind flanges, locked double-block and bleed-type valves, etc.

(d) **Dedicated system** means a self contained, single product system with no pipeline connections to any other system in the facility.

(e) **Common system** means a system that usually utilizes a manifold or pipeline that handles more than one product exclusively.

(f) **Shell capacity** means the gross volumetric capacity of the storage tank as determined from tank calibration.

(g) **Fill capacity** means the capacity of the storage tank when filled to the maximum fill level, i.e., the highest point to which a petroleum storage tank may be filled with product, allowing for product expansion and other safety considerations.

(h) **Product** or **products** means the Government-owned petroleum product(s) within one of the following categories which the Schedule indicates the Contractor is to receive, store, handle, and ship under this contract:

- (1) Crude oil shall include any unrefined petroleum in its natural state;
- (2) Light fuels includes any grade of the following distillate fuel types: aircraft engine fuels, motor gasoline, naphtha and like solvents, kerosene, diesel fuels and numbers 1 and 2 heating fuels;
- (3) Heavy fuels includes number 4 heating fuel and all residual type fuels;
- (4) Lubricating oil includes all grades of such product utilized in aircraft, automotive, diesel, and marine engines;
- (5) Packaged products means all products packaged in containers of 55-gallon capacity or less.

(i) **Unit of quantity** means--

- (1) The U.S. gallon of 231 cubic inches;
- (2) The barrel of 42 U.S. gallons;
- (3) The long ton of 2240 pounds; and
- (4) The pound of 16 ounces, depending upon the unit shown in the Schedule.

(j) **Description of services to be performed** as stated in the CHANGES - FIXED PRICE clause is defined to include, but is not limited to, the following:

- (1) The grade or type of product by specification;
- (2) The regular working hours set forth in the schedule;
- (3) The method of receiving or shipping.
- (4) The specifications of Contractor-furnished equipment,
- (5) The provisions of the General Delivery Conditions as amended;
- (6) The number of the Contractor-furnished units (equipment);
- (7) The response time;
- (8) The estimated truck movement; and
- (9) The MERT hours.

(k) **Equipment** or **delivery and servicing equipment** as used herein means those fuel and/or oil servicing units such as tank trucks, tank trailers, mobile hose carts, pantographs (fixed or mobile), small trailers and drums together with the necessary prime movers.

(l) **Fuel and Oil** used herein means aircraft reciprocating engine fuel, aircraft turbine and jet engine fuel, aircraft reciprocating engine oil, and jet engine oil.

(m) **Response time** is defined as that interval of time between the time a call is placed on the Contractor to service an aircraft and the time the Contractor's equipment is in position to service said aircraft.

(n) For purposes of this contract, the term **truck movement** as set forth above is defined to be any of the following:

- (1) The movement of a refueler, defueler, or oiler to, and servicing of, an aircraft. In the event that more than one aircraft is serviced as a result of one service call, each individual aircraft servicing shall be considered a "truck movement."
- (2) The movement of a combination refueler/oiler which services an aircraft with both products. Such movement shall be considered a 1 1/2 "truck movement."
- (3) The movement of a combination refueler/oiler which services an aircraft with oil only. Such movement shall be considered one "truck movement."

(4) Servicing of group support equipment, small tanks, and/or other units as designated by the Commanding Officer, with either jet fuel or AVGAS, shall count as truck movements if dispatched separately. Each such servicing, if performed in multiples or in conjunction with aircraft fuel delivery, shall be counted as a 1/5 "truck movement" with the exception of the first which will count as one "truck movement."

(5) The movement of a refueler, defueler, or oiler as the result of a service call which is not completed, due to no fault of the Contractor.

(6) The movement of a refueler, defueler, or oiler to a tank farm for purposes of refilling or discharging product as applicable. With regard to refueler refilling, only those refills totaling 1,000 gallons or more per vehicle shall be considered a truck movement. The Commanding Officer may, at his discretion, exercise control and supervision over the refilling/discharging operation.

(DESC 52.202-9F35)

#### **II.02 COMPUTER GENERATED FORMS (JAN 1991)**

(a) Any data required to be submitted on a Standard or Optional Form prescribed by the Federal Acquisition Regulation (FAR) may be submitted on a computer generated version of the form, PROVIDED there is no change to the name, content, or sequence of the data elements on the form, and provided the form carries the Standard or Optional Form Number and edition date.

(b) Unless prohibited by agency regulations, any data required to be submitted on an agency unique form prescribed by an agency supplement to the FAR may be submitted on a computer generated version of the form PROVIDED there is no change to the name, content, or sequence of the data elements on the form and provided the form carries the agency form number and edition date.

(c) If the Contractor submits a computer generated version of a form that is different from the required form, then the rights and obligations of the parties will be determined based on the content of the required form.

(FAR 52.253-1)

#### **II.06 REQUESTS FOR EQUITABLE ADJUSTMENT (MAR 1998)**

(a) The amount of any request for equitable adjustment to contract terms shall accurately reflect the contract adjustment for which the Contractor believes the Government is liable. The request shall include only costs for performing the change, and shall not include any costs that already have been reimbursed or that have been separately claimed. All indirect costs included in the request shall be properly allocable to the change in accordance with applicable acquisition regulations.

(b) In accordance with 10 U.S.C. 2410(a), any request for equitable adjustment to contract terms that exceeds the simplified acquisition threshold shall bear, at the time of submission, the following certificate executed by an individual authorized to certify the request on behalf of the Contractor:

**I certify that the request is made in good faith, and that the supporting data are accurate and complete to the best of my knowledge and belief.**

---

(Official's Name)

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(Title)

(c) The certification in paragraph (b) of this clause requires full disclosure of all relevant facts, including—

(1) Cost or pricing data if required in accordance with subpart 15.403-4 of the Federal Acquisition Regulation (FAR); and

(2) Information other than cost or pricing data, in accordance with subsection 15.403-3 of the FAR, including actual cost data and data to support any estimated costs, even if cost or pricing data are not required.

- (d) The certification requirement in paragraph (b) of this clause does not apply to—
- (1) Requests for routine contract payments; for example, requests for payment for accepted supplies and services, routine vouchers under a cost-reimbursement type contract, or progress payment invoices; or
  - (2) Final adjustments under an incentive provision of the contract.

(DFARS 252.243-7002)

#### **II.07 REQUIRED CENTRAL CONTRACTOR REGISTRATION (MAR 1998)**

(a) **DEFINITIONS.** As used in this clause--

(1) **Central Contractor Registration (CCR) database** means the primary DoD repository for Contractor information required for the conduct of business with DoD.

(2) **Data Universal Numbering Systems (DUNS) number** means the 9-digit number assigned by Dun and Bradstreet Information Services to identify unique business entities.

(3) **Data Universal Numbering System + 4 (DUNS+4) number** means the DUNS number assigned by Dun and Bradstreet plus a 4-digit suffix that may be assigned at the discretion of the parent business concern for such purposes as identifying subunits or affiliates of the parent business concern.

(4) **Registered in the CCR database** means that all mandatory information, including the DUNS number or the DUNS+4 number, if applicable, and the corresponding Commercial and Government Entity (CAGE) code is in the CCR database; the DUNS number and the CAGE code have been validated; and all edits have been successfully completed.

(b) (1) By submission of an offer, the offeror acknowledges the requirement that a prospective awardee must be registered in the CCR database prior to award, during performance, and through final payment of any contract resulting from this solicitation, except for awards to foreign vendors for work to be performed outside the United States.

(2) The offeror shall provide its DUNS or, if applicable, its DUNS+4 number with its offer, which will be used by the Contracting Officer to verify that the offeror is registered in the CCR database.

(3) Lack of registration in the CCR database will make an offeror ineligible for award.

(4) DoD has established a goal of registering an applicant in the CCR database within 48 hours after receipt of a complete and accurate application via the Internet. However, registration of an applicant submitting an application through a method other than the Internet may take up to 30 days. Therefore, offerors that are not registered should consider applying for registration immediately upon receipt of this solicitation.

(c) The Contractor is responsible for the accuracy and completeness of the data within the CCR, and for any liability resulting from the Government's reliance on inaccurate or incomplete data. To remain registered in the CCR database after the initial registration, the Contractor is required to confirm on an annual basis that its information in the CCR database is accurate and complete.

(d) Offerors and contractors may obtain information on registration and annual confirmation requirements by calling

**1-888-227-2423** or via the Internet at **<http://ccr.edi.disa.mil>**.

(DFARS 252.204-7004)

#### **II.19 AUTHORIZED DEVIATIONS IN CLAUSES (APR 1984)**

(a) The use in this solicitation or contract of any Federal Acquisition Regulation (48 CFR Chapter 1).

clause with an authorized deviation is indicated by the addition of "(DEVIATION)" after the date of the clause.

(b) The use in this solicitation or contract of any DOD FAR Supplement Regulation (48 CFR Chapter 2)

clause with an authorized deviation is indicated by the addition of "(DEVIATION)" after the name of the regulation.

(FAR 52.252-6)

#### **II.20 CLAUSES INCORPORATED BY REFERENCE (DESC OCT 1999)**

(a) This document incorporates one or more clauses by reference, with the same force and effect as if they were given in full text. Upon request, the Contracting Officer will make their full text available. Also, the full text of any FAR, DFARS or DLAD clause may be accessed electronically at these addresses:

**FAR/DFARS:** **<http://farsite.hill.af.mil>**

**FAR/DFARS:** <http://www.far.npr.gov>  
**DLAD:** <http://www.procregs.hq.dla.mil/icps.htm>

(b) All DESC clauses are contained in full text in this document.

(DESC 52.252-9F08)

**II.22 PRICE OR FEE ADJUSTMENT FOR ILLEGAL OR IMPROPER ACTIVITY (JAN 1997)**

(a) The Government, at its election, may reduce the price of a fixed-price-type contract and the total cost and fee under a cost-type contract by the amount of profit or fee determined as set forth in paragraph (b) of this clause if the head of the contracting activity or designee determines that there was a violation of subsection 27(a), (b), or (c) of the Office of Federal Procurement Policy Act, as amended (41 U.S.C. 423), as implemented in section 3.104 of the Federal Acquisition Regulation.

(b) The price or fee reduction referred to in paragraph (a) of this clause shall be--

(1) For cost-plus-fixed-fee contracts, the amount of the fee specified in the contract at the time of award;

(2) For cost-plus-incentive-fee contracts, the target fee specified in the contract at the time of award, notwithstanding any minimum fee or "fee floor" specified in the contract.

(3) For cost-plus-award-fee contracts--

(i) The base fee established in the contract at the time of contract award;

(ii) If no base fee is specified in the contract, 30 percent of the amount of each award fee otherwise payable to the Contractor for each award fee evaluation period or at each award fee determination point.

(4) For fixed-price-incentive contracts, the Government may--

(i) Reduce the contract target price and contract target profit both by an amount equal to the initial target profit specified in the contract at the time of contract award; or

(ii) If an immediate adjustment to the contract target price and contract target profit would have a significant adverse impact on the incentive price revision relationship under the contract, or adversely affect the contract financing provisions, the Contracting Officer may defer such adjustment until establishment of the total final price of the contract. The total final price established in accordance with the incentive price revision provisions of the contract shall be reduced by an amount equal to the initial target profit specified in the contract at the time of contract award and such reduced price shall be the total final contract price.

(5) For firm-fixed-price contracts, by 10 percent of the initial contract price or a profit amount determined by the Contracting Officer from records or documents in existence prior to the date of the contract award.

(c) The Government may, at its election, reduce a prime Contractor's price or fee in accordance with the procedures of paragraph (b) of this clause for violations of the Act by its subcontractors by an amount not to exceed the amount of profit or fee reflected in the subcontract at the time the subcontract was first definitively priced.

(d) In addition to the remedies in paragraphs (a) and (c) of this clause, the Government may terminate this contract for default. The rights and remedies of the Government specified herein are not exclusive, and are in addition to any other rights and remedies provided by law or under this contract.

(FAR 52.203-10)

**II.22-1 CANCELLATION, RESCISSION, AND RECOVERY OF FUNDS FOR ILLEGAL OR IMPROPER ACTIVITY (JAN 1997)**

(a) If the Government receives information that a Contractor or a person has engaged in conduct constituting a violation of subsection (a), (b), (c), or (d) of section 27 of the Office of Federal Procurement Policy Act (41 U.S.C. 423) (the Act), as amended by section 4304 of the 1996 National Defense Authorization Act for Fiscal year 1996 (Pub. L. 104-106), the Government may--

(1) Cancel the solicitation, if the contract has not yet been awarded or issued; or

(2) Rescind the contract with respect to which--

(i) The Contractor or someone acting for the Contractor has been convicted for an offense where the conduct constitutes a violation of subsection 27(a) or (b) of the Act for the purpose of either--

(A) Exchanging the information covered by such subsections for anything of value; or

(B) Obtaining or giving anyone a competitive advantage in the award of a Federal agency procurement contract; or

(ii) The head of the contracting activity has determined, based upon a preponderance of the evidence, that the Contractor or someone acting for the Contractor has engaged in conduct constituting an offense punishable under subsection 27(e)(1) of the Act.

(b) If the Government rescinds the contract under paragraph (a) of this clause, the Government is entitled to recover, in addition to any penalty prescribed by law, the amount expended under the contract.

(c) The rights and remedies of the Government specified herein are not exclusive, and are in addition to any other rights and remedies provided by law, regulation, or under this contract.

(FAR 52.203-8)

## **11.24 LIMITATION ON PAYMENTS TO INFLUENCE CERTAIN FEDERAL TRANSACTIONS (JUN 1997)**

### **(a) DEFINITIONS.**

**Agency**, as used in this clause, means executive agency as defined in 2.101.

**Covered Federal action**, as used in this clause, means any of the following Federal actions:

- (1) The awarding of any Federal contract.
- (2) The making of any Federal grant.
- (3) The making of any Federal loan.
- (4) The entering into of any cooperative agreement.
- (5) The extension, continuation, renewal, amendment, or modification of any Federal contract,

grant, loan, or cooperative agreement.

**Indian tribe and tribal organization**, as used in this clause, have the meaning provided in section 4 of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450B) and include Alaskan Natives.

**Influencing or attempting to influence**, as used in this clause, means making, with the intent to influence, any communication to or appearance before an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with any covered Federal action.

**Local government**, as used in this clause, means a unit of government in a State and, if chartered, established, or otherwise recognized by a State for the performance of a governmental duty, including a local public authority, a special district, an intrastate district, a council of governments, a sponsor group representative organization, and any other instrumentality of a local government.

**Officer or employee of an agency**, as used in this clause, includes the following individuals who are employed by an agency:

- (1) An individual who is appointed to a position in the Government under title 5, United States Code, including a position under a temporary appointment.
- (2) A member of the uniformed services, as defined in subsection 101(3), title 37, United States Code.
- (3) A special Government employee, as defined in section 202, title 18, United States Code.
- (4) An individual who is a member of a Federal advisory committee, as defined by the Federal Advisory Committee Act, title 5, United States Code, appendix 2.

**Person**, as used in this clause, means an individual, corporation, company, association, authority, firm, partnership, society, State, and local government, regardless of whether such entity is operated for profit or not for profit. This term excludes an Indian tribe, tribal organization, or any other Indian organization with respect to expenditures specifically permitted by other Federal law.

**Reasonable compensation**, as used in this clause, means, with respect to a regularly employed officer or employee of any person, compensation that is consistent with the normal compensation for such officer or employee for work that is not furnished to, not funded by, or not furnished in cooperation with the Federal Government.

**Reasonable payment**, as used in this clause, means, with respect to professional and other technical services, a payment in an amount that is consistent with the amount normally paid for such services in the private sector.

**Recipient**, as used in this clause, includes the Contractor and all subcontractors. This term excludes an Indian tribe, tribal organization, or any other Indian organization with respect to expenditures specifically permitted by other Federal law.

**Regularly employed**, as used in this clause, means, with respect to an officer or employee of a person requesting or receiving a Federal contract, an officer or employee who is employed by such person for at least 130 working days within 1 year immediately preceding the date of the submission that initiates agency consideration of such person for receipt of such contract. An officer or employee who is employed by such person for less than 130 working days within 1 year immediately preceding the date of the submission that initiates agency consideration of such person shall be considered to be regularly employed as soon as he or she is employed by such person for 130 working days.

**State**, as used in this clause, means a State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, a territory or possession of the United States, an agency or instrumentality of a State, and multi-State, regional, or interstate entity having governmental duties and powers.

**(b) PROHIBITIONS.**

(1) Section 1352 of Title 31, United States Code, among other things, prohibits a recipient of a Federal contract, grant, loan, or cooperative agreement from using appropriated funds to pay any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with any of the following covered Federal actions: the awarding of any Federal contract; the making of any Federal grant; the making of any Federal loan; the entering into of any cooperative agreement; or the modification of any Federal contract, grant, loan, or cooperative agreement.

(2) The Act also requires Contractors to furnish a disclosure if any funds other than Federal appropriated funds (including profit or fee received under a covered Federal transaction) have been paid, or will be paid, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with a Federal contract, grant, loan, or cooperative agreement.

(3) The prohibitions of the Act do not apply under the following conditions:

**(i) AGENCY AND LEGISLATIVE LIAISON BY OWN EMPLOYEES.**

(A) The prohibition on the use of appropriated funds, in subparagraph (b)(1) of this clause, does not apply in the case of a payment of reasonable compensation made to an officer or employee of a person requesting or receiving a covered Federal action if the payment is for agency and legislative liaison activities not directly related to a covered Federal action.

(B) For purposes of subdivision (b)(3)(i)(A) of this clause, providing any information specifically requested by an agency or Congress is permitted at any time.

(C) The following agency and legislative liaison activities are permitted at any time where they are not related to a specific solicitation for any covered Federal action:

(a) Discussing with an agency the qualities and characteristics (including individual demonstrations) of the person's products or services, conditions or terms of sale, and service capabilities.

(b) Technical discussions and other activities regarding the application or adaptation of the person's products or services for an agency's use.

(D) The following agency and legislative liaison activities are permitted where they are prior to formal solicitation of any covered Federal action:

(a) Providing any information not specifically requested but necessary for an agency to make an informed decision about initiation of a covered Federal action;

(b) Technical discussions regarding the preparation of an unsolicited proposal prior to its official submission; and

(c) Capability presentations by persons seeking awards from an agency pursuant to the provisions of the Small Business Act, as amended by Public Law 95-507, and subsequent amendments.

(E) Only those services expressly authorized by subdivision (b)(3)(i)(A) of this clause are permitted under this clause.

**(ii) PROFESSIONAL AND TECHNICAL SERVICES.**

(A) The prohibition on the use of appropriated funds, in subparagraph (b)(1) of this clause, does not apply in the case of--

(a) A payment of reasonable compensation made to an officer or employee of a person requesting or receiving a covered Federal action or an extension, continuation, renewal, amendment, or modification of a covered Federal action, if payment is for professional or technical services rendered directly in the preparation, submission, or negotiation of any bid, proposal, or application for that Federal action or for meeting requirements imposed by or pursuant to law as a condition for receiving that Federal action.

(b) Any reasonable payment to a person, other than an officer or employee of a person requesting or receiving a covered Federal action or an extension, continuation, renewal, amendment, or modification of a covered Federal action if the payment is for professional or technical services rendered directly in the preparation, submission, or negotiation of any bid, proposal, or application for that Federal action or for meeting requirements imposed by or pursuant to law as a condition for receiving that Federal action. Persons other than officers or employees of a person requesting or receiving a covered Federal action include consultants and trade associations.

(B) For purposes of subdivision (b)(3)(ii)(A) of this clause, "professional and technical services" shall be limited to advice and analysis directly applying any professional or technical discipline. For example, drafting of a legal document accompanying a bid or proposal by a lawyer is allowable. Similarly, technical advice provided by an engineer on the performance or operational capability of a piece of equipment rendered directly in the negotiation of a contract is allowable. However, communications with the intent to influence made by a professional (such as a licensed lawyer) or a technical person (such as a licensed accountant) are not allowable under this section unless they provide advice and analysis directly applying their professional or technical expertise and unless the advice or analysis is rendered directly and solely in the preparation, submission or negotiation of a covered Federal action. Thus, for example, communications with the intent to influence made by a lawyer that do not provide legal advice or analysis directly and solely related to the legal aspects of his or her client's proposal, but generally advocate one proposal over another are not allowable under this section because the lawyer is not providing professional legal services. Similarly, communications with the intent to influence made by an engineer providing an engineering analysis prior to the preparation or submission of a bid or proposal are not allowable under this section since the engineer is providing technical services but not directly in the preparation, submission, or negotiation of a covered Federal action.

(C) Requirements imposed by or pursuant to law as a condition for receiving a covered Federal award include those required by law or regulation and any other requirements in the actual award documents.

(D) Only those services expressly authorized by subdivisions (b)(3)(ii)(A)(a) and (b) of this clause are permitted under this clause.

(E) The reporting requirements of FAR 3.803(a) shall not apply with respect to payments of reasonable compensation made to regularly employed officers or employees of a person.

(iii) **DISCLOSURE.**

(A) Each person who requests or receives from an agency a Federal contract shall file with that agency a disclosure form, OMB standard form LLL, Disclosure of Lobbying Activities, if such person has made or has agreed to make any payments using nonappropriated funds (to INCLUDE profits from any covered Federal action), which would be prohibited under subparagraph (b)(1) of this clause, if paid for with appropriated funds.

(B) The Contractor shall file a disclosure form at the end of each calendar quarter in which there occurs any event that materially affects the accuracy of the information contained in any disclosure form previously filed by such person under subdivision (A) of this clause. An event that materially affects the accuracy of the information reported includes--

(a) A cumulative increase of \$25,000 or more in the amount paid or expected to be paid for influencing or attempting to influence a covered Federal action;

(b) A change in the person(s) or individual(s) influencing or attempting to influence a covered Federal action; or

(c) A change in the officer(s), employee(s), or Members(s) contacted to influence or attempt to influence a covered Federal action.

(C) The Contractor shall require the submittal of a certification, and if required, a disclosure form by any person who requests or receives any subcontract exceeding \$100,000 under the Federal contract.

(D) All subcontractor disclosure forms (but not certifications) shall be forwarded from tier to tier until received by the prime Contractor. The prime Contractor shall submit all disclosures to the Contracting Officer at the end of the calendar quarter in which the disclosure form is submitted by the subcontractor. Each subcontractor certification shall be retained in the subcontract file of the awarding Contractor.

(iv) **AGREEMENT.** The Contractor agrees not to make any payment prohibited by this clause.

(v) **PENALTIES.**

(A) Any person who makes an expenditure prohibited under paragraph (a) of this clause or who fails to file or amend the disclosure form to be filed or amended by paragraph (b) of this clause shall be subject to civil penalties as provided for by 31 U.S.C. 1352. An imposition of a civil penalty does not prevent the Government from seeking any other remedy that may be applicable.

(B) Contractors may rely without liability on the representation made by their subcontractors in the certification and disclosure form.

(vi) **COST ALLOWABILITY.** Nothing in this clause makes allowable or reasonable any costs which would otherwise be unallowable or unreasonable. Conversely, costs made specifically unallowable by the requirements in this clause will not be made allowable under any other provision.

(FAR 52.203-12)

## **12 CONTROL OF GOVERNMENT PERSONNEL WORK PRODUCT (APR 1992)**

The Contractor's procedures for protecting against unauthorized disclosure of information shall not require Department of Defense employees or members of the Armed Forces to relinquish control of their work products, whether classified or not, to the Contractor.

(DFARS 252.204-7003)

### **12.01 CHANGES - FIXED-PRICE (ALT I) (APR 1984)**

(a) The Contracting Officer may at any time, by written order, and without notice to the sureties, if any, make changes within the general scope of this contract in any one or more of the following:

- (1) Description of services to be performed.
- (2) Time of performance (i.e., hours of the day, days of the week, etc.).
- (3) Place of performance of the services.

(b) If any such change causes an increase or decrease in the cost of, or the time required for, performance of any part of the work under this contract, whether or not changed by the order, the Contracting Officer shall make an equitable adjustment in the contract price, the delivery schedule, or both, and shall modify the contract.

(c) The Contractor must assert its right to an adjustment under this clause within 30 days from the date of receipt of the written order. However, if the Contracting Officer decides that the facts justify it, the Contracting Officer may receive and act upon a proposal submitted before final payment of the contract.

(d) If the Contractor's proposal includes the cost of property made obsolete or excess by the change, the Contracting Officer shall have the right to prescribe the manner of the disposition of the property.

(e) Failure to agree to any adjustment shall be a dispute under the DISPUTES clause. However, nothing in this clause shall excuse the Contractor from proceeding with the contract as changed.

(FAR 52.243-1/Alt I)

## **13 EXTRAS (APR 1984)**

Except as otherwise provided in this contract, no payment for extras shall be made unless such extras and the price therefor have been authorized in writing by the Contracting Officer.

(FAR 52.232-11)

### **13.01 PROMPT PAYMENT (JUN 1997)**

*Notwithstanding any other payment clause in this contract, the Government will make invoice payments and contract financing payments under the terms and conditions specified in this clause. Payment shall be considered as being made on the day a check is dated or the date of an electronic funds transfer.*



*Definitions of pertinent terms are set forth in Section 32.902 of the Federal Acquisition Regulation. All days referred to in this clause are calendar days, unless otherwise specified. (However, see subparagraph (a)(4) of this clause concerning payments due on Saturdays, Sundays, and legal holidays.)*

**(a) INVOICE PAYMENTS.**

**(1) DUE DATE.**

*(i) Except as indicated in subparagraph (a)(2) and paragraph (c) of this clause, the due date for making invoice payments by the designated payment office shall be the later of the following two events:*

(A) The 30th day after the designated billing office has received a proper invoice from the Contractor (except as provided in subdivision (a)(1)(ii) of this clause).

(B) The 30th day after Government acceptance of supplies delivered or services performed by the Contractor. On a final invoice where the payment amount is subject to contract settlement actions, acceptance shall be deemed to have occurred on the effective date of the contract settlement.

*(ii) If the designated billing office fails to annotate the invoice with the actual date of receipt at the time of receipt, the invoice payment due date shall be the 30th day after the date of the Contractor's invoice; provided a proper invoice is received and there is no disagreement over quantity, quality, or Contractor compliance with contract requirements.*

**(2) CERTAIN FOOD PRODUCTS AND OTHER PAYMENTS.**

*(i) Due dates on Contractor invoices for meat, meat food products, or fish; perishable agricultural commodities, and dairy products, edible fats or oils, and food products prepared from edible fats or oils are--*

(A) For meat and meat food products, as defined in Section 2(a)(3) of the Packers and Stockyard Act of 1921 (7 U.S.C. 182(3)), and as further defined in Public Law 98-181, including any edible fresh or frozen poultry meat, any perishable poultry meat food product, fresh eggs, and any perishable egg product, as close as possible to, but no later than, the 7th day after product delivery.

(B) For fresh or frozen fish, as defined in Section 204(3) of the Fish and Seafood Promotion Act of 1986 (16 U.S.C. 4003(3)), as close as possible to, but not later than, the 7th day after product delivery.

(C) For perishable agricultural commodities, as defined in Section 1(4) of the Perishable Agricultural Commodities Act of 1930 (7 U.S.C. 499a(4)), as close as possible to, but not later than, the 10th day after product delivery, unless another date is specified in the contract.

*(D) For dairy products, as defined in Section 111(e) of the Dairy Production Stabilization Act of 1983 (7 U.S.C. 4502(e)), edible fats or oils, and food products prepared from edible fats or oils, as close as possible to, but not later than, the 10th day after the date on which a proper invoice has been received. Liquid milk, cheese, certain processed cheese products, butter, yogurt, ice cream, mayonnaise, salad dressings, and other similar products, fall within this classification. Nothing in the Act limits this classification to refrigerated products. When questions arise regarding the proper classification of a specific product, prevailing industry practices will be followed in specifying a contract payment due date. The burden of proof that a classification of a specific product is, in fact, prevailing industry practice is upon the Contractor making the representation.*

(ii) If the contract does not require submission of an invoice for payment (e.g., periodic lease payments), the due date will be as specified in the contract.

**(3) CONTRACTOR'S INVOICE.** The Contractor shall prepare and submit invoices to the designated billing office specified in the contract. A proper invoice must include the items listed in subdivisions (a)(3)(i) through (a)(3)(viii) of this clause. If the invoice does not comply with these requirements, it shall be returned within 7 days after the date the designated billing office received the invoice (3 days for meat, meat food products, or fish, and 5 days for perishable agricultural commodities, edible fats or oils, and food products prepared from edible fats or oils) with a statement of the reasons why it is not a proper invoice. Untimely notification will be taken into account in the computation of any interest penalty owed the Contractor in the manner described in subparagraph (a)(5) of this clause.

(i) Name and address of the Contractor.

*(ii) Invoice date. (The Contractor is encouraged to date invoices as close as possible to the date of the mailing or transmission.)*

- (iii) Contract number or other authorization for supplies delivered or services performed (including order number and contract line item number).
- (iv) Description, quantity, unit of measure, unit price, and extended price of supplies delivered or services performed.
- (v) Shipping and payment terms (e.g., shipment number and date of shipment, prompt payment discount terms). Bill of lading number and weight of shipment will be shown for shipments on Government bills of lading.
- (vi) *Name and address of Contractor official to whom payment is to be sent (must be the same as that in the contract or in a proper notice of assignment).*
- (vii) *Name (where practicable), title, phone number, and mailing address of person to be notified in the event of a defective invoice.*
- (viii) Any other information or documentation required by the contract (such as evidence of shipment).
- (ix) *While not required, the Contractor is strongly encouraged to assign an identification number to each invoice.*

(4) **INTEREST PENALTY.** An interest penalty shall be paid automatically by the designated payment office, without request from the Contractor, if payment is not made by the due date and the conditions listed in subdivisions (a)(4)(i) through (a)(4)(iii) of this clause are met, if applicable. However, when the due date falls on a Saturday, Sunday, or legal holiday when Federal Government offices are closed and Government business is not expected to be conducted, payment may be made on the following business day without incurring a late payment interest penalty.

- (i) A proper invoice was received by the designated billing office.
- (ii) A receiving report or other Government documentation authorizing payment was processed and there was no disagreement over quantity, quality, or Contractor compliance with any contract term or condition.

(iii) *In the case of a final invoice for any balance of funds due the Contractor for supplies delivered or services performed, the amount was not subject to further contract settlement actions between the Government and the Contractor.*

(5) **COMPUTING PENALTY AMOUNT.** The interest penalty shall be at the rate established by the Secretary of the Treasury under section 12 of the Contract Disputes Act of 1978 (41 U.S.C. 611) that is in effect on the day after the due date, except where the interest penalty is prescribed by other governmental authority (e.g., tariffs). This rate is referred to as the "Renegotiation Board Interest Rate," and it is published in the **Federal Register** semiannually on or about January 1 and July 1. The interest penalty shall accrue daily on the invoice principal payment amount approved by the Government until the payment date of such approved principal amount; and will be compounded in 30-day increments inclusive from the first day after the due date through the payment date. That is, interest accrued at the end of any 30-day period will be added to the approved invoice principal payment amount and be subject to interest penalties if not paid in the succeeding 30-day period. If the designated billing office failed to notify the Contractor of a defective invoice within the periods prescribed in subparagraph (a)(3) of this clause, the due date on the corrected invoice will be adjusted by subtracting from such date the number of days taken beyond the prescribed notification of defects period. Any interest penalty owed the Contractor will be based on this adjusted due date. Adjustments will be made by the designated payment office for errors in calculating interest penalties.

(i) For the sole purpose of computing an interest penalty that might be due the Contractor, Government acceptance shall be deemed to have occurred constructively on the 7th day (unless otherwise specified in this contract) after the Contractor delivered the supplies or performed the services in accordance with the terms and conditions of the contract, unless there is a disagreement over quantity, quality, or Contractor compliance with a contract provision. In the event that actual acceptance occurs within the constructive acceptance period, the determination of an interest penalty shall be based on the actual date of acceptance. The constructive acceptance requirement does not, however, compel Government officials to accept supplies or services, perform contract administration functions, or make payment prior to fulfilling their responsibilities.

(ii) *The following periods of time will not be included in the determination of an interest penalty:*

(A) The period taken to notify the Contractor of defects in invoices submitted to the Government, but this may not exceed 7 days (3 days for meat, meat food products, or fish; 5 days for perishable agricultural commodities, dairy products, edible fats or oils, and food products prepared from edible fats or oils).

***(B) The period between the defects notice and resubmission of the corrected invoice by the Contractor.***

(C) For incorrect electronic funds transfer (EFT) information, in accordance with the EFT clause of this contract.

***(iii) Interest penalties will not continue to accrue after the filing of a claim for such penalties under the clause at 52.233-1, Disputes, or for more than 1 year. Interest penalties of less than \$1.00 need not be paid.***

***(iv) Interest penalties are not required on payment delays due to disagreement between the Government and the Contractor over the payment amount or other issues involving contract compliance or on amounts temporarily withheld or retained in accordance with the terms of the contract. Claims involving disputes, and any interest that may be payable, will be resolved in accordance with the clause at 52.233-1, Disputes.***

**(6) PROMPT PAYMENT DISCOUNTS.** An interest penalty shall also be paid automatically by the designated payment office, without request from the Contractor, if a discount for prompt payment is taken improperly. The interest penalty will be calculated as described in subparagraph (a)(5) of this clause on the amount of discount taken for the period beginning with the first day after the end of the discount period through the date when the Contractor is paid.

**(7) ADDITIONAL INTEREST PENALTY.**

***(i) A penalty amount, calculated in accordance with subdivision (a)(7)(iii) of this clause, shall be paid in addition to the interest penalty amount if the Contractor--***

(A) Is owed an interest penalty of \$1.00 or more;

(B) Is not paid the interest penalty within 10 days after the date the invoice amount is paid; and

(C) Makes a written demand to the designated payment office for additional penalty payment, in accordance with subdivision (a)(7)(ii) of this clause, postmarked not later than 40 days after the invoice amount is paid.

***(ii) (A) Contractors shall support written demands for additional penalty payments with the following data. No additional data shall be required. Contractors shall--***

(a) Specifically assert that late payment interest is due under a specific invoice, and request payment of all overdue late payment interest penalty and such additional penalty as may be required;

(b) Attach a copy of the invoice on which the unpaid late payment interest was due; and

(c) State that payment of the principal has been received, including the date of receipt.

***(B) Demands must be postmarked on or before the 40th day after payment was made, except that--***

(a) If the postmark is illegible or nonexistent, the demand must have been received and annotated with the date of receipt by the designated payment office on or before the 40th day after payment was made; or

***(b) If the postmark is illegible or nonexistent and the designated payment office fails to make the required annotation, the demand's validity will be determined by the date the Contractor has placed on the demand; provided such date is no later than the 40th day after payment was made.***

***(iii) (A) The additional penalty shall be equal to 100 percent of any original late payment interest penalty except--***

(a) The additional penalty shall not exceed \$5,000;

(b) The additional penalty shall never be less than \$25; and

(c) No additional penalty is owed if the amount of the underlying interest penalty is less than \$1.00.

***(B) If the interest penalty ceases to accrue in accordance with the limits stated in subdivision (a)(5)(iii) of this clause, the amount of the additional penalty shall be calculated on the amount of interest penalty that would have accrued in the absence of these limits, subject to the overall limits on the additional penalty specified in subdivision (a)(7)(iii)(A) of this clause.***

(C) For determining the maximum and minimum additional penalties, the test shall be the interest penalty due on each separate payment made for each separate contract. The maximum and minimum additional penalty shall not be based on individual invoices unless the invoices are paid separately. Where payments are consolidated for disbursing purposes, the maximum and minimum additional penalty determination shall be made separately for each contract therein.

**(D) *The additional penalty does not apply to payments regulated by other Government regulations (e.g., payments under utility contracts subject to tariffs and regulation).***

**(b) CONTRACT FINANCING PAYMENTS.**

**(1) Due Dates For Recurring Financing Payments.** If this contract provides for contract financing, requests for payment shall be submitted to the designated billing office as specified in this contract or as directed by the Contracting Officer. Contract financing payments shall be made on the (insert day as prescribed by Agency head; if not prescribed, insert 30th day) day after receipt of a proper contract financing request by the designated billing office. In the event that an audit or other review of a specific financing request is required to ensure compliance with the terms and conditions of the contract, the designated payment office is not compelled to make payment by the due date specified.

**(2) *Due Dates For Other Contract Financing. For advance payments, loans, or other arrangements that do not involve recurrent submissions of contract financing requests, payment shall be made in accordance with the corresponding contract terms or as directed by the Contracting Officer.***

**(3) Interest Penalty Not Applicable.** Contract financing payments shall not be assessed an interest penalty for payment delays.

**(c) FAST PAYMENT PROCEDURE DUE DATES.** If this contract contains the clause at 52.213-1, Fast Payment Procedure, payments will be made within 15 days after the date of receipt of the invoice.

**(FAR 52.232-25)**

**I4 DISCOUNTS FOR PROMPT PAYMENT (MAY 1997)**

(a) Discounts for prompt payments will not be considered in the evaluation of offers. However, any offered discount will form a part of the award, and will be taken if payment is made within the discount period indicated in the offer by the offeror. As an alternative to offering a prompt payment discount in conjunction with the offer, offerors awarded contracts may include prompt payment discounts on individual invoices.

(b) In connection with any discount offered for prompt payment, time shall be computed from the date of the invoice. If the Contractor has not placed a date on the invoice, the due date shall be calculated from the date the designated billing office receives a proper invoice, provided the agency annotates such invoice with the date of receipt at the time of receipt. For the purpose of computing the discount earned, payment shall be considered to have been made on the date that appears on the payment check or, for an electronic funds transfer, the specified payment date. When the discount date falls on a Saturday, Sunday, or legal holiday when the Federal Government offices are closed and Government business is not expected to be conducted, payment may be made on the following business day.

**(FAR 52.232-8)**

**I7 PRINTING/COPYING DOUBLE-SIDED ON RECYCLED PAPER (JUN 1996)**

(a) In accordance with Executive Order 12873, dated October 20, 1993, as amended by Executive Order 12995, dated March 25, 1996, the offeror/Contractor is encouraged to submit paper documents, such as offers, letters, or reports, that are printed/copied double-sided on recycled paper that has at least 20 percent postconsumer material.

(b) The 20 percent standard applies to high-speed copier paper, offset paper, forms bond, computer printout paper, carbonless paper, file folders, white woven envelopes, and other uncoated printing and writing paper such as writing and office paper, book paper, cotton fiber paper, and cover stock. An alternative to meeting the 20 percent postconsumer material standard is 50 percent recovered material content of certain industrial by-products.

**(FAR 52.204-4)**

**I8.02 ASSIGNMENT OF CLAIMS (ALT I) (APR 1984)**

(a) The Contractor, under the Assignment of Claims Act, as amended, 31 U.S.C. 3727, 41 U.S.C. 15 (hereafter referred to as "the Act"), may assign its rights to be paid amounts due or to become due as a result of the

performance of this contract to a bank, trust company, or other financing institution, including any Federal lending agency. The assignee under such an assignment may thereafter further assign or reassign its right under the original assignment to any type of financing institution described in the preceding sentence. Unless otherwise stated in this contract, payments to an assignee of any amounts due or to become due under this contract shall not, to the extent specified in the Act, be subject to reduction or setoff.

(b) Any assignment or reassignment authorized under the Act and this clause shall cover all unpaid amounts payable under this contract, and shall not be made to more than one party, except that an assignment or reassignment may be made to one party as agent or trustee for two or more parties participating in the financing of this contract.

(c) The Contractor shall not furnish or disclose to any assignee under this contract any classified document (including this contract) or information related to work under this contract until the Contracting Officer authorizes such action in writing.

(FAR 52.232-23/Alt I)

### **111.03      DEFAULT (FIXED-PRICE SUPPLY AND SERVICE) (APR 1984)**

(a) (1) The Government may, subject to paragraphs (c) and (d) below, by written notice of default to the Contractor, terminate this contract in whole or in part if the Contractor fails to--

(i) Deliver the supplies or to perform the services within the time specified in this contract or any extension;

(ii) Make progress, so as to endanger performance of this contract (but see subparagraph (a)(2) below); or

(iii) Perform any of the other provisions of this contract (but see subparagraph (a)(2) below).

(2) The Government's right to terminate this contract under subdivisions (1)(ii) and (1)(iii) above, may be exercised if the Contractor does not cure such failure within 10 days (or more if authorized in writing by the Contracting Officer) after receipt of the notice from the Contracting Officer specifying the failure.

(b) If the Government terminates this contract in whole or in part, it may acquire, under the terms and in the manner the Contracting Officer considers appropriate, supplies or services similar to those terminated, and the Contractor will be liable to the Government for any excess costs for those supplies or services. However, the Contractor shall continue the work not terminated.

(c) Except for defaults of subcontractors at any tier, the Contractor shall not be liable for any excess costs if the failure to perform the contract arises from causes beyond the control and without the fault or negligence of the Contractor. Examples of such causes include (1) acts of God or of the public enemy, (2) acts of the Government in either its sovereign or contractual capacity, (3) fires, (4) floods, (5) epidemics, (6) quarantine restrictions (7) strikes, (8) freight embargoes, and (9) unusually severe weather. In each instance, the failure to perform must be beyond the control and without the fault or negligence of the Contractor.

(d) If the failure to perform is caused by the default of a subcontractor at any tier, and if the cause of the default is beyond the control of both the Contractor and subcontractor, and without the fault or negligence of either, the Contractor shall not be liable for any excess costs for failure to perform, unless the subcontracted supplies or services were obtainable from other sources in sufficient time for the Contractor to meet the required delivery schedule.

(e) If this contract is terminated for default, the Government may require the Contractor to transfer title and deliver to the Government, as directed by the Contracting Officer, any (1) completed supplies, and (2) partially completed supplies and materials, parts, tools, dies, jigs, fixtures, plans, drawings, information, and contract rights (collectively referred to as "manufacturing materials" in this clause) that the Contractor has specifically produced or acquired for the terminated portion of this contract. Upon direction of the Contracting Officer, the Contractor shall also protect and preserve property in its possession in which the Government has an interest.

(f) The Government shall pay contract price for completed supplies delivered and accepted. The Contractor and Contracting Officer shall agree on the amount of payment for manufacturing materials delivered and accepted and for the protection and preservation of the property. Failure to agree will be a dispute under the DISPUTES clause. The Government may withhold from these amounts any sum the Contracting Officer determines to be necessary to protect the Government against loss because of outstanding liens or claims of former lien holders.

(g) If, after termination, it is determined that the Contractor was not in default, or that the default was excusable, the rights and obligations of the parties shall be the same as if the termination had been issued for the convenience of the Government.

(h) The rights and remedies of the Government in this clause are in addition to any other rights and remedies provided by law or under this contract. (FAR 52.249-8)

#### **I11.04 BANKRUPTCY (JUL 1995)**

In the event the Contractor enters into proceedings relating to bankruptcy, whether voluntary or involuntary, the Contractor agrees to furnish, by certified mail or electronic commerce method authorized by the contract, written notification of the bankruptcy to the Contracting Officer responsible for administering the contract. This notification shall be furnished within five days of the initiation of the proceedings relating to bankruptcy filing. This notification shall include the date on which the bankruptcy petition was filed, the identity of the court in which the bankruptcy petition was filed, and a listing of Government contract numbers and contracting offices for all Government contracts against which final payment has not been made. This obligation remains in effect until final payment under this contract. (FAR 52.242-13)

#### **I12.01 DISPUTES (OCT 1995)**

(a) This contract is subject to the Contract Disputes Act of 1978, as amended (41 U.S.C. 601-613).

(b) Except as provided in the Act, all disputes arising under or relating to this contract shall be resolved under this clause.

(c) **Claim**, as used in this clause, means a written demand or written assertion by one of the contracting parties seeking, as a matter of right, the payment of money in a sum certain, the adjustment or interpretation of contract terms, or other relief arising under or relating to this contract. A claim arising under a contract, unlike a claim relating to that contract, is a claim that can be resolved under a contract clause that provides for the relief sought by the claimant. However, a written demand or written assertion by the Contractor seeking the payment of money exceeding \$100,000 is not a claim under the Act until certified as required by subparagraph (d)(2) of this clause. A voucher, invoice, or other routine request for payment that is not in dispute when submitted is not a claim under the Act. The submission may be converted to a claim under the Act, by complying with the submission and certification requirements of this clause, if it is disputed either as to liability or amount or is not acted upon in a reasonable time.

(d) (1) A claim by the Contractor shall be made in writing and, unless otherwise stated in this contract, submitted within 6 years after accrual of the claim to the Contracting Officer for a written decision. A claim by the Government against the Contractor shall be subject to a written decision by the Contracting Officer.

(2) (i) Contractors shall provide the certification specified in subparagraph (d)(2)(iii) of this clause when submitting any claim--

(A) Exceeding \$50,000; or

(B) Regardless of the amount claimed, when using--

(a) Arbitration conducted pursuant to 5 U.S.C. 575-580; or

(b) Any other alternative means of dispute resolution (ADR) technique that the agency elects to handle in accordance with the Administrative Dispute Resolution Act (ADRA).

(ii) The certification requirement does not apply to issues in controversy that have not been submitted as all or part of a claim.

(iii) The certification shall state as follows: "I certify that the claim is made in good faith; that the supporting data are accurate and complete to the best of my knowledge and belief; that the amount requested accurately reflects the contract adjustment for which the Contractor believes the Government is liable; and that I am duly authorized to certify the claim on behalf of the Contractor."

(3) The certification may be executed by any person duly authorized to bind the Contractor with respect to the claim.

(e) For Contractor claims of \$50,000 or less, the Contracting Officer must, if requested in writing by the Contractor, render a decision within 60 days of the request. For Contractor-certified claims over \$50,000, the Contracting Officer must, within 60 days, decide the claim or notify the Contractor of the date by which the decision will be made.

(f) The Contracting Officer's decision shall be final unless the Contractor appeals or files a suit as provided in the Act.

(g) If the claim by the Contractor is submitted to the Contracting Officer or a claim by the Government is presented to the Contractor, the parties, by mutual consent, may agree to use ADR. If the Contractor refuses an offer for alternative disputes resolution, the Contractor shall inform the Contracting Officer, in writing, of the Contractor's specific reasons for rejecting the request. When using arbitration conducted pursuant to 5 U.S.C. 575-580, or when using any other ADR technique that the agency elects to handle in accordance with the ADRA, any claim, regardless of amount, shall be accompanied by the certification described in subparagraph (d)(2)(iii) of this clause, and executed in accordance with subparagraph (d)(3) of this clause.

(h) The Government shall pay interest on the amount found due and unpaid from (1) the date the Contracting Officer receives the claim (certified, if required), or (2) the date payment otherwise would be due, if that date is later, until the date of payment. With regard to claims having defective certifications, as defined in FAR 33.201, interest shall be paid from the date that the Contracting Officer initially receives the claim. Simple interest on claims shall be paid at the rate, fixed by the Secretary of the Treasury as provided in the Act, which is applicable to the period during which the Contracting Officer receives the claim and then at the rate applicable for each 6-month period as fixed by the Treasury Secretary during the pendency of the claim.

(i) The Contractor shall proceed diligently with performance of this contract, pending final resolution of any request for relief, claim, appeal, or action arising under the contract, and comply with any decision of the Contracting Officer.

(FAR 52.233-1)

## **I12.02 CHOICE OF LAW (OVERSEAS) (JUN 1997)**

This contract shall be construed and interpreted in accordance with the substantive laws of the United States of America. By the execution of this contract, the Contractor expressly agrees to waive any rights to invoke the jurisdiction of local national courts where this contract is performed and agrees to accept the exclusive jurisdiction of the United States Armed Services Board of Contract Appeals and the United States Court of Federal Claims for the hearing and determination of any and all disputes that may arise under the Disputes clause of this contract.

(DFARS 252.233-7001)

## **I20 COVENANT AGAINST CONTINGENT FEES (APR 1984)**

(a) The Contractor warrants that no person or agency has been employed or retained to solicit or obtain this contract upon an agreement or understanding for a contingent fee, except a bona fide employee or agency. For breach or violation of this warranty, the Government shall have the right to annul this contract without liability or, in its discretion, to deduct from the contract price or consideration, or otherwise recover, the full amount of the contingent fee.

(b) (1) **Bona fide agency**, as used in this clause, means an established commercial or selling agency, maintained by a contractor for the purpose of securing business, that neither exerts nor proposes to exert improper influence to solicit or obtain Government contracts nor holds itself out as being able to obtain any Government contract or contracts through improper influence.

(2) **Bona fide employee**, as used in this clause, means a person, employed by a contractor and subject to the contractor's supervision and control as to time, place, and manner of performance, who neither exerts nor proposes to exert improper influence to solicit or obtain Government contracts nor holds out as being able to obtain any Government contract or contracts through improper influence.

(3) **Contingent fee**, as used in this clause, means any commission, percentage, brokerage, or other fee that is contingent upon the success that a person or concern has in securing a Government contract.

(4) **Improper influence**, as used in this clause, means any influence that induces or tends to induce a Government employee or officer to give consideration or to act regarding a Government contract on any basis other than the merits of the matter.

(FAR 52.203-5)

## **I24 NOTICE TO THE GOVERNMENT OF LABOR DISPUTES (FEB 1997)**

If the Contractor has knowledge that any actual or potential labor dispute is delaying or threatens to delay the timely performance of this contract, the Contractor shall immediately give notice, including all relevant information, to the Contracting Officer.

(FAR 52.222-1)

**I27 GRATUITIES (APR 1984)**

- (a) The right of the Contractor to proceed may be terminated by written notice if, after notice and hearing, the agency head or a designee determines that the Contractor, its agent, or another representative--
- (1) Offered or gave a gratuity (e.g., an entertainment or gift) to an officer, official, or employee of the Government; and
  - (2) Intended, by the gratuity, to obtain a contract or favorable treatment under a contract.
- (b) The facts supporting this determination may be reviewed by any court having lawful jurisdiction.
- (c) If this contract is terminated under paragraph (a) above, the Government is entitled--
- (1) To pursue the same remedies as in a breach of the contract; and
  - (2) In addition to any other damages provided by law, to exemplary damages of not less than 3 nor more than 10 times the cost incurred by the Contractor in giving gratuities to the person concerned, as determined by the agency head or a designee. (This subparagraph (c)(2) is applicable only if this contract uses money appropriated to the Department of Defense.)
- (d) The rights and remedies of the Government provided in this clause shall not be exclusive and are in addition to any other rights and remedies provided by law or under this contract.

(FAR 52.203-3)

this contract.

- (c) The Contractor shall not furnish or disclose to any assignee under this contract any classified document (including this contract) or information related to work under this contract until the Contracting Officer authorizes such action in writing.

(FAR 52.232-23/Alt I)

**I28.21 TAXES - FOREIGN FIXED-PRICE CONTRACTS (JAN 1991)**

- (a) To the extent that this contract provides for furnishing supplies or performing services outside the United States, its possessions, and Puerto Rico, this clause applies in lieu of any Federal, State, and local taxes clause of the contract.

- (b) **Contract date**, as used in this clause, means the date set for bid opening or, if this is a negotiated contract or a modification, the effective date of this contract or modification.

**Country concerned**, as used in this clause, means any country, other than the United States, its possessions, and Puerto Rico, in which expenditures under this contract are made.

**Tax and taxes**, as used in this clause, include fees and charges for doing business that are levied by the government of the country concerned or by its political subdivisions.

**All applicable taxes and duties**, as used in this clause, means all taxes and duties, in effect on the contract date, that the taxing authority is imposing and collecting on the transactions or property covered by this contract, pursuant to written ruling or regulation in effect on the contract date.

**After-imposed tax**, as used in this clause, means any new or increased tax or duty, or tax that was exempted or excluded on the contract date but whose exemption was later revoked or reduced during the contract period, other than excepted tax, on the transactions or property covered by this contract that the Contractor is required to pay or bear as the result of legislative, judicial, or administrative action taking effect after the contract date.

**After-relieved tax**, as used in this clause, means any amount of tax or duty, other than an excepted tax, that would otherwise have been payable on the transactions or property covered by this contract, but which the Contractor is not required to pay or bear, or for which the Contractor obtains a refund, as the result of legislative, judicial, or administrative action taking effect after the contract date.

**Excepted tax**, as used in this clause, means social security or other employment taxes, net income and franchise taxes, excess profits taxes, capital stock taxes, transportation taxes, unemployment compensation taxes, and property taxes. "Excepted tax" does not include gross income taxes levied on or measured by sales or receipts from sales, property taxes assessed on completed supplies covered by this contract, or any tax assessed on the Contractor's possession of, interest in, or use of property, title to which is in the U.S. Government.

- (c) Unless otherwise provided in this contract, the contract price includes all applicable taxes and duties, except taxes and duties that the Government of the United States and the government of the country concerned have agreed shall not be applicable to expenditures in such country by or on behalf of the United States.



(d) The contract price shall be increased by the amount of any after-imposed tax or of any tax or duty specifically excluded from the contract price by a provision of this contract that the Contractor is required to pay or bear, including any interest or penalty, if the Contractor states in writing that the contract price does not include any contingency for such tax and if liability for such tax, interest, or penalty was not incurred through the Contractor's fault, negligence, or failure to follow instructions of the Contracting Officer or to comply with the provisions of paragraph (i) below.

(e) The contract price shall be decreased by the amount of any after-relieved tax, including any interest or penalty. The Government of the United States shall be entitled to interest received by the Contractor incident to a refund of taxes to the extent that such interest was earned after the Contractor was paid by the Government of the United States for such taxes. The Government of the United States shall be entitled to repayment of any penalty refunded to the contractor to the extent that the penalty was paid by the Government.

(f) The contract price shall be decreased by the amount of any tax or duty, other than an excepted tax, that was included in the contract and that the Contractor is required to pay or bear, or does not obtain a refund of, through the Contractor's fault, negligence, or failure to follow instructions of the Contracting Officer or to comply with the provisions of paragraph (i) below.

(g) No adjustment shall be made in the contract price under this clause unless the amount of the adjustment exceeds \$250.

(h) If the Contractor obtains a reduction in tax liability under the United States Internal Revenue Code (Title 26, U.S. Code) because of the payment of any tax or duty that either was included in the contract price or was the basis of an increase in the contract price, the amount of the reduction shall be paid or credited to the Government of the United States as the Contracting Officer directs.

(i) The Contractor shall take all reasonable action to obtain exemption from or refund of any taxes or duties, including interest or penalty, from which the United States Government, the Contractor, any subcontractor, or the transactions or property covered by this contract are exempt under the laws of the country concerned or its political subdivisions or which the governments of the United States and of the country concerned have agreed shall not be applicable to expenditures in such country by or on behalf of the United States.

(j) The Contractor shall promptly notify the Contracting Officer of all matters relating to taxes or duties that reasonably may be expected to result in either an increase or decrease in the contract price and shall take appropriate action as the Contracting Officer directs. The contract price shall be equitably adjusted to cover the costs of action taken by the Contractor at the direction of the Contracting Officer, including any interest, penalty, and reasonable attorneys' fees.

(FAR 52.229-6)

#### **131.05      LIMITATION OF PRICE AND CONTRACTOR OBLIGATIONS (DESC OCT 1984)**

(a) Funds available for performance are described in the Schedule. The amount of funds available at award is not considered sufficient for the performance required for any program year other than the first program year. When additional funds are available for the full requirements of the next succeeding program year, the Contracting Officer shall, not later than the date specified in the Schedule (unless a later date is agreed to), so notify the Contractor in writing. The Contracting Officer shall also modify the amount of funds described in the Schedule as available for contract performance. This procedure shall apply for each successive program year.

(b) The Government is not obligated to the Contractor for any amount over that described in the Schedule as available for contract performance.

(c) The Contractor is not obligated to incur costs for the performance required for any program year after the first unless and until written notification is received from the Contracting Officer of an increase in availability of funds. If so notified, the Contractor's obligation shall increase only to the extent contract performance is required for the additional program year for which funds are made available.

(d) If this contract is terminated under the TERMINATION FOR CONVENIENCE OF THE GOVERNMENT clause, "total contract price" in that clause means the amount available for performance of this contract, as in (a) above. "Work under the contract" in that clause means the work under program year requirements for which funds have been made available. If the contract is terminated for default, the Government's rights under this contract shall apply to the entire multiyear requirements.

*(e) Notification to the Contractor of an increase or decrease in the funds available for performance of this contract under another clause (e.g., an OPTION or CHANGES clause) shall not constitute the notification contemplated by (a) above.*

(DESC 52.217-9F75)

**I32 CANCELLATION UNDER MULTIYEAR CONTRACTS (OCT 1997)**

(a) **Cancellation**, as used in this clause, means that the Government is canceling its requirements for all supplies or services in program years subsequent to that in which notice of cancellation is provided. Cancellation shall occur by the date or within the time period specified in the Schedule, unless a later date is agreed to, if the Contracting Officer (1) notifies the Contractor that funds are not available for contract performance for any subsequent program year, or (2) fails to notify the Contractor that funds are available for performance of the succeeding program year requirement.

(b) Except for cancellation under this clause or termination under the DEFAULT clause, any reduction by the Contracting Officer in the requirements of this contract shall be considered a termination under the TERMINATION FOR CONVENIENCE OF THE GOVERNMENT clause.

(c) If cancellation under this clause occurs, the Contractor will be paid a cancellation charge not over the cancellation ceiling specified in the Schedule as applicable at the time of cancellation.

(d) The cancellation charge will cover only (1) costs (i) incurred by the Contractor and/or subcontractor, (ii) reasonably necessary for performance of the contract, and (iii) that would have been equitably amortized over the entire multiyear contract period but, because of the cancellation, are not so amortized, and (2) a reasonable profit or fee on the costs.

(e) The cancellation charge shall be computed and the claim made for it as if the claim were being made under the TERMINATION FOR CONVENIENCE OF THE GOVERNMENT clause of this contract. The Contractor shall submit the claim promptly but no later than one year from the date (1) of notification of the nonavailability of funds, or (2) specified in the Schedule by which notification of the availability of additional funds for the next succeeding program year is required to be issued, whichever is earlier, unless extensions in writing are granted by the Contracting Officer.

(f) The Contractor's claim may include--

(1) Reasonable nonrecurring costs (see FAR Subpart 15.4) that are applicable to and normally would have been amortized in all supplies or services that are multiyear requirements;

(2) Allocable portions of the costs of facilities acquired or established for the conduct of the work, to the extent that it is impracticable for the Contractor to use the facilities in its commercial work, and if the costs are not charged to the contract through overhead or otherwise depreciated;

(3) Costs incurred for the assembly, training, and transportation to and from the job site of a specialized work force; and

(4) Costs not amortized by the unit price solely because the cancellation had precluded anticipated benefits of Contractor or subcontractor learning.

(g) The claim shall not include--

(1) Labor, material, or other expenses incurred by the Contractor or subcontractors for performance of the canceled work;

(2) Any cost already paid to the Contractor;

(3) Anticipated profit or unearned fee on the canceled work; or

(4) For service contracts, the remaining useful commercial life of facilities. Useful commercial life means the commercial utility of the facilities rather than their physical life with due consideration given to such factors as location of facilities, their specialized nature, and obsolescence.

(h) This contract may include an Option clause with the period for exercising the option limited to the date in the contract for notification that funds are available for the next succeeding program year. If so, the Contractor agrees not to include in option quantities any costs of a startup or nonrecurring nature that have been fully set forth in the contract. The Contractor further agrees that the option quantities will reflect only those recurring costs and a reasonable profit or fee necessary to furnish the additional option quantities.

(i) Quantities added to the original contract through the Option clause of this contract shall be included in the quantity canceled for the purpose of computing allowable cancellation charges.

(FAR 52.217-2)

**I33 INTEREST (JUN 1996)**

(a) Except as otherwise provided in this contract under a PRICE REDUCTION FOR DEFECTIVE COST OR PRICING DATA clause or a COST ACCOUNTING STANDARDS clause, all amounts that become payable by the Contractor to the Government under this contract (net of any applicable tax credit under the Internal Revenue Code (26 U.S.C. 1481) shall bear simple interest from the date due until paid unless paid within 30 days of becoming due. The interest rate shall be the interest rate established by the Secretary of the Treasury as provided in Section 12 of the Contract Disputes Act of 1978 (Public Law 95-563), which is applicable to the period in which the amount becomes due, as provided in paragraph (b) of this clause, and then at the rate applicable for each six-month period as fixed by the Secretary until the amount is paid.

(b) Amounts shall be due at the earliest of the following dates:

(1) The date fixed under this contract.

(2) The date of the first written demand for payment consistent with this contract, including any demand resulting from a default termination.

(3) The date the Government transmits to the Contractor a proposed supplemental agreement to confirm completed negotiations establishing the amount of debt.

(4) If this contract provides for revision of prices, the date of written notice to the Contractor stating the amount of refund payable in connection with a pricing proposal or a negotiated pricing agreement not confirmed by contract modification.

(c) The interest charge made under this clause may be reduced under the procedures prescribed in 32.614-2 of the Federal Acquisition Regulation in effect on the date of this contract.

(FAR 52.232-17)

**I36 TERMINATION FOR CONVENIENCE OF THE GOVERNMENT (FIXED-PRICE) (SEP 1996)**

(a) The Government may terminate performance of work under this contract in whole or, from time to time, in part if the Contracting Officer determines that a termination is in the Government's interest. The Contracting Officer shall terminate by delivering to the Contractor a Notice of Termination specifying the extent of termination and the effective date.

(b) After receipt of a Notice of Termination, and except as directed by the Contracting Officer, the Contractor shall immediately proceed with the following obligations, regardless of any delay in determining or adjusting any amounts due under this clause:

(1) Stop work as specified in the notice.

(2) Place no further subcontracts or orders (referred to as subcontracts in this clause) for materials, services, or facilities, except as necessary to complete the continued portion of the contract.

(3) Terminate all subcontracts to the extent they relate to the work terminated.

(4) Assign to the Government, as directed by the Contracting Officer, all right, title, and interest of the Contractor under the subcontracts terminated, in which case the Government shall have the right to settle or to pay any termination settlement proposal arising out of those terminations.

(5) With approval or ratification to the extent required by the Contracting Officer, settle all outstanding liabilities and termination settlement proposals arising from the termination of subcontracts; the approval or ratification will be final for purposes of this clause.

(6) As directed by the Contracting Officer, transfer title and deliver to the Government (i) the fabricated or unfabricated parts, work in process, completed work, supplies, and other material produced or acquired for the work terminated, and (ii) the completed or partially completed plans, drawings, information, and other property that, if the contract had been completed, would be required to be furnished to the Government.

(7) Complete performance of the work not terminated.

(8) Take any action that may be necessary, or that the Contracting Officer may direct, for the protection and preservation of the property related to this contract that is in the possession of the Contractor and in which the Government has or may acquire an interest.

(9) Use its best efforts to sell, as directed or authorized by the Contracting Officer, any property of the types referred to in subparagraph (b)(6) of this clause; provided, however, that the Contractor (i) is not required to extend credit to any purchaser and (ii) may acquire the property under the conditions prescribed by, and at prices approved by, the Contracting Officer. The proceeds of any transfer or disposition will be applied to reduce

any payments to be made by the Government under this contract, credited to the price or cost of the work, or paid in any other manner directed by the Contracting Officer.

(c) The Contractor shall submit complete termination inventory schedules no later than 120 days from the effective date of termination, unless extended in writing by the Contracting Officer upon written request of the Contractor within this 120-day period.

(d) After expiration of the plant clearance period as defined in Subpart 45.6 of the Federal Acquisition Regulation, the Contractor may submit to the Contracting Officer a list, certified as to quantity and quality, of termination inventory not previously disposed of, excluding items authorized for disposition by the Contracting Officer. The Contractor may request the Government to remove those items or enter into an agreement for their storage. Within 15 days, the Government will accept title to those items and remove them or enter into a storage agreement. The Contracting Officer may verify the list upon removal of the items, or if stored, within 45 days from submission of the list, and shall correct the list, as necessary, before final settlement.

(e) After termination, the Contractor shall submit a final termination settlement proposal to the Contracting Officer in the form and with the certification prescribed by the Contracting Officer. The Contractor shall submit the proposal promptly, but no later than 1 year from the effective date of termination, unless extended in writing by the Contracting Officer upon written request of the Contractor within this 1-year period. However, if the Contracting Officer determines that the facts justify it, a termination settlement proposal may be received and acted on after 1 year or any extension. If the Contractor fails to submit the proposal within the time allowed, the Contracting Officer may determine, on the basis of information available, the amount, if any, due the Contractor because of the termination and shall pay the amount determined.

(f) Subject to paragraph (e) above, the Contractor and the Contracting Officer may agree upon the whole or any part of the amount to be paid because of the termination. The amount may include a reasonable allowance for profit on work done. However, the agreed amount, whether under this paragraph (f) or paragraph (g) of this clause, exclusive of costs shown in subparagraph (g)(3) of this clause, may not exceed the total contract price as reduced by (1) the amount of payments previously made and (2) the contract price of work not terminated. The contract shall be modified, and the Contractor paid the agreed amount. Paragraph (g) of this clause shall not limit, restrict, or affect the amount that may be agreed upon to be paid under this paragraph.

(g) If the Contractor and the Contracting Officer fail to agree on the whole amount to be paid because of the termination of work, the Contracting Officer shall pay the Contractor the amounts determined by the Contracting Officer as follows, but without duplication of any amounts agreed on under paragraph (f) of this clause:

(1) The contract price for completed supplies or services accepted by the Government (or sold or acquired under subparagraph (b)(9) of this clause) not previously paid for, adjusted for any saving of freight and other charges.

(2) The total of--

(i) The costs incurred in the performance of the work terminated, including initial costs and preparatory expense allocable thereto, but excluding any costs attributable to supplies or services paid or to be paid under subparagraph (g)(1) of this clause;

(ii) The cost of settling and paying termination settlement proposals under terminated subcontracts that are properly chargeable to the terminated portion of the contract if not included in subdivision (i) above; and

(iii) A sum, as profit on subdivision (g)(2)(i) of this clause, determined by the Contracting Officer under 49.202 of the Federal Acquisition Regulation, in effect on the date of this contract, to be fair and reasonable; however, if it appears that the Contractor would have sustained a loss on the entire contract had it been completed, the Contracting Officer shall allow no profit under this subdivision (iii) and shall reduce the settlement to reflect the indicated rate of loss.

(3) The reasonable costs of settlement of the work terminated, including --

(i) Accounting, legal, clerical, and other expenses reasonably necessary for the preparation of termination settlement proposals and supporting data;

(ii) The termination and settlement of subcontracts (excluding the amounts of such settlements); and

(iii) Storage, transportation, and other costs incurred, reasonably necessary for the preservation, protection, or disposition of the termination inventory.

(h) Except for normal spoilage, and except to the extent that the Government expressly assumed the risk of loss, the Contracting Officer shall exclude from the amounts payable to the Contractor under paragraph (g) of

this clause, the fair value, as determined by the Contracting Officer, of property that is destroyed, lost, stolen, or damaged so as to become undeliverable to the Government or to a buyer.

(i) The cost principles and procedures of Part 31 of the Federal Acquisition Regulation, in effect on the date of this contract, shall govern all costs claimed, agreed to, or determined under this clause.

(j) The Contractor shall have the right of appeal, under the DISPUTES clause, from any determination made by the Contracting Officer under paragraph (e), (g), or (l) of this clause, except that if the Contractor failed to submit the termination settlement proposal or request for equitable adjustment within the time provided in paragraph (e) or (l) respectively, and failed to request a time extension, there is no right of appeal.

(k) In arriving at the amount due the Contractor under this clause, there shall be deducted--

(1) All unliquidated advance or other payments to the Contractor under the terminated portion of this contract;

(2) Any claim which the Government has against the Contractor under this contract; and

(3) The agreed price for, or the proceeds of sale of, materials, supplies, or other things acquired by the Contractor or sold under the provisions of this clause and not recovered by or credited to the Government.

(l) If the termination is partial, the Contractor may file a proposal with the Contracting Officer for an equitable adjustment of the price(s) of the continued portion of the contract. The Contracting Officer shall make any equitable adjustment agreed upon. Any proposal by the Contractor for an equitable adjustment under this clause shall be requested within 90 days from the effective date of termination unless extended in writing by the Contracting Officer.

(m) (1) The Government may, under the terms and conditions it prescribes, make partial payments and payments against costs incurred by the Contractor for the terminated portion of the contract, if the Contracting Officer believes the total of these payments will not exceed the amount to which the Contractor will be entitled.

(2) If the total payments exceed the amount finally determined to be due, the Contractor shall repay the excess to the Government upon demand, together with interest computed at the rate established by the Secretary of the Treasury under 50 U.S.C. App. 1215(b)(2). Interest shall be computed for the period from the date the excess payment is received by the Contractor to the date the excess is repaid. Interest shall not be charged on any excess payment due to a reduction in the Contractor's termination settlement proposal because of retention or other disposition of termination inventory until 10 days after the date of the retention or disposition, or a later date determined by the Contracting Officer because of the circumstances.

(n) Unless otherwise provided in this contract or by statute, the Contractor shall maintain all records and documents relating to the terminated portion of this contract for 3 years after final settlement. This includes all books and other evidence bearing on the Contractor's costs and expenses under this contract. The Contractor shall make these records and documents available to the Government, at the Contractor's office, at all reasonable times, without any direct charge. If approved by the Contracting Officer, photographs, microphotographs, or other authentic reproductions may be maintained instead of original records and documents.

(FAR 52.249-2)

#### **I43.01 LIMITATION OF LIABILITY - SERVICES (FEB 1997)**

(a) Except as provided in paragraphs (b) and (c) below, and except to the extent that the Contractor is expressly responsible under this contract for deficiencies in the services required to be performed under it (including any materials furnished in conjunction with those services), the Contractor shall not be liable for loss of or damage to property of the Government that (1) occurs after Government acceptance of services performed under this contract and (2) results from any defects or deficiencies in the services performed or materials furnished.

(b) The limitation of liability under paragraph (a) above shall not apply when a defect or deficiency in, or the Government's acceptance of, services performed or materials furnished results from willful misconduct or lack of good faith on the part of any of the Contractor's managerial personnel. The term "Contractor's managerial personnel," as used in this clause, means the Contractor's directors, officers, and any of the Contractor's managers, superintendents, or equivalent representatives who have supervision or direction of--

(1) All or substantially all of the Contractor's business;

(2) All or substantially all of the Contractor's operations at any one plant, laboratory, or separate location at which the contract is being performed; or

(3) A separate and complete major industrial operation connected with the performance of this contract.

(c) If the Contractor carries insurance, or has established a reserve for self-insurance, covering liability for loss or damage suffered by the Government through the Contractor's performance of services or furnishing of materials under this contract, the Contractor shall be liable to the Government, to the extent of such insurance or reserve, for loss of or damage to property of the Government occurring after Government acceptance of, and resulting from any defects and deficiencies in, services performed or materials furnished under this contract.

(FAR 52.246-25)

**I72 PREFERENCE FOR PRIVATELY OWNED U.S.-FLAG COMMERCIAL VESSELS (ALT D)  
(JUN 1997)**

(a) Except as provided in paragraph (b) below, the Contractor shall use privately owned U.S.-flag commercial vessels, and no others, in the ocean transportation of any supplies to be furnished under this contract.

(b) If such vessels are not available for timely shipment at rates that are fair and reasonable for privately owned U.S.-flag commercial vessels, the Contractor shall notify the Contracting Officer and request (1) authorization to ship in foreign-flag vessels or (2) designation of available U.S.-flag vessels. If the Contractor is authorized in writing by the Contracting Officer to ship the supplies in foreign-flag vessels, the contract price shall be equitably adjusted to reflect the difference in costs of shipping the supplies in privately owned U.S.-flag commercial vessels and in foreign-flag vessels.

(c) (1) The Contractor shall submit one legible copy of a rated on-board ocean bill of lading for each shipment to both (i) the Contracting Officer and (ii) the Division of National Cargo, Office of Market Development, Maritime Administration, U.S. Department of Transportation, Washington, DC 20590. Subcontractor bills of lading shall be submitted through the Prime Contractor.

(2) The Contractor shall furnish these bill of lading copies--

(i) Within 20 working days of the date of loading for shipments originating in the United States; or

(ii) Within 30 working days for shipments originating outside the United States. Each bill of lading copy shall contain the following information:

- (A) Sponsoring U.S. Government agency.
- (B) Name of vessel.
- (C) Vessel flag of registry.
- (D) Date of loading.
- (E) Port of loading.
- (F) Port of final discharge.
- (G) Description of commodity.
- (H) Gross weight in pounds and cubic feet if available.
- (I) Total ocean freight revenue in U.S. dollars.

(d) Except contracts at or below the simplified acquisition threshold, the Contractor shall insert the substance of this clause, including this paragraph (d), in all subcontracts or purchase orders under this contract.

(e) The requirement in paragraph (a) does not apply to--

(1) Contracts at or below the simplified acquisition threshold;  
(2) Cargoes carried in vessels of the Panama Canal Commission or as required or authorized by law or treaty;

(3) Ocean transportation between foreign countries of supplies purchased with foreign currencies made available, or derived from funds that are made available, under the Foreign Assistance Act of 1961 (22 U.S.C. 2353); and

(4) Shipments of classified supplies when the classification prohibits the use of non-Government vessels.

(f) Guidance regarding fair and reasonable rates for privately owned U.S.-flag commercial vessels may be obtained from the--

OFFICE OF COSTS AND RATES  
MARITIME ADMINISTRATION  
400 SEVENTH ST SW  
WASHINGTON DC 20590  
Phone: (202) 366-4610

**194 PRICE REDUCTION FOR DEFECTIVE COST OR PRICING DATA (OCT 1997)**

(a) If any price, including profit or fee, negotiated in connection with this contract, or any cost reimbursable under this contract, was increased by any significant amount because—

(1) The Contractor or a subcontractor furnished cost or pricing data that were not complete, accurate, and current as certified in its Certificate of Current Cost or Pricing Data;

(2) A subcontractor or prospective subcontractor furnished the Contractor cost or pricing data that were not complete, accurate, and current as certified in the Contractor's Certificate of Current cost or Pricing Data; or

(3) Any of these parties furnished data of any description that were not accurate, the price or cost shall be reduced accordingly and the contract shall be modified to reflect the reduction.

(b) Any reduction in the contract price under paragraph (a) of this clause due to defective data from a prospective subcontractor that was not subsequently awarded the subcontract shall be limited to the amount, plus applicable overhead and profit markup, by which –

(1) The actual subcontract; or

(2) The actual cost to the Contractor, if there was no subcontract, was less than the prospective subcontract cost estimate submitted by the Contractor; provided, that the actual subcontract price was not itself affected by defective cost or pricing data.

(c) (1) If the Contracting Officer determines under paragraph (a) of this clause that a price or cost reduction should be made, the Contractor agrees not to raise the following matters as a defense:

(i) The Contractor or subcontractor was a sole source supplier or otherwise was in a superior bargaining position and thus the price of the contract would not have been modified even if accurate, complete, and current cost or pricing data had been submitted.

(ii) The Contracting Officer should have known that the cost or pricing data in issue were defective even though the Contractor or subcontractor took no affirmative action to bring the character of the data to the attention of the Contracting Officer.

(iii) The contract was based on an agreement about the total cost of the contract and there was no agreement about the cost of each item procured under the contract.

(iv) The Contractor or subcontractor did not submit a Certificate of Current Cost or Pricing Data.

(2) (i) Except as prohibited by subdivision (c)(2)(ii) of this clause, an offset in an amount determined appropriate by the Contracting Officer based upon the facts shall be allowed against the amount of a contract price reduction if–

(A) The Contractor certifies to the Contracting Officer that, to the best of the Contractor's knowledge and belief, the Contractor is entitled to the offset in the amount requested; and

(B) The Contractor proves that the cost or pricing data were available before the “as of” date specified on its Certificate of Current Cost or Pricing Data, and that the data were not submitted before such date.

(ii) An offset shall not be allowed if –

(A) The understated data were known by the Contractor to be understated before the “as of” date specified on its Certificate of Current Cost or Pricing Data was signed; or

(B) The Government proves that the facts demonstrate that the contract price would not have increased in the amount to be offset even if the available data had been submitted before the “as of” date specified on its Certificate of Current Cost or Pricing Data.

(d) If any reduction in the contract price under this clause reduces the price of items for which payment was made prior to the date of the modification reflecting the price reduction, the Contractor shall be liable to and shall pay the United States at the time such overpayment is repaid--

(1) Simple interest on the amount of such overpayment to be computed from the date(s) of overpayment to the Contractor to the date the Government is repaid by the Contractor at the applicable underpayment rate effective for each quarter prescribed by the Secretary of the Treasury under 26 U.S.C. 6621(a)(2); and

(2) A penalty equal to the amount of the overpayment, if the Contractor or subcontractor knowingly submitted cost or pricing data that were incomplete, inaccurate, or noncurrent.

**195            AUDIT AND RECORDS -- NEGOTIATION (AUG 1996)**

(a) As used in this clause, **records** includes books, documents, accounting procedures and practices, and other data, regardless of type and regardless of whether such items are in written form, in the form of computer data, or any other form.

(b) **EXAMINATION OF COSTS.** If this is a cost-reimbursement, incentive, time-and-materials, labor-hours, or price-redeterminable contract, or any combination of these, the Contractor shall maintain, and the Contracting Officer, or an authorized representative of the Contracting Officer, shall have the right to examine and audit all records and other evidence sufficient to reflect properly all costs claimed to have been incurred or anticipated to be incurred in performing this contract. This right of examination shall include inspection at all reasonable times of the Contractor's plants, or parts of them, engaged in performance of this contract.

(c) **COST OR PRICING DATA.** If the Contractor has been required to submit cost or pricing data in connection with any pricing action relating to this contract, the Contracting Officer, or an authorized representative of the Contracting Officer, in order to evaluate the accuracy, completeness, and currency of the cost or pricing data, shall have the right to examine and audit all of the Contractor's records, including computations and projections, related to--

- (1) The proposal for the contract, subcontract, or modification;
- (2) The discussions conducted on the proposal(s), including those related to negotiating;
- (3) Pricing of the contract, subcontract, or modification; or
- (4) Performance of the contract, subcontract or modification.

(d) **COMPTROLLER GENERAL.**

(1) The Comptroller General of the United States, or an authorized representative, shall have access to and the right to examine any of the Contractor's directly pertinent records involving transactions related to this contract or a subcontract hereunder.

(2) This paragraph may not be construed to require the Contractor or subcontractor to create or maintain any record that the Contractor or subcontractor does not maintain in the ordinary course of business or pursuant to a provision of law.

(e) **REPORTS.** If the Contractor is required to furnish cost, funding, or performance reports, the Contracting Officer, or an authorized representative of the Contracting Officer shall have the right to examine and audit the supporting records and materials for the purpose of evaluating (1) the effectiveness of the Contractor's policies and procedures to produce data compatible with the objectives of these reports and (2) the data reported.

(f) **AVAILABILITY.** The Contractor shall make available at its office at all reasonable times the records, materials, and other evidence described in paragraphs (a), (b), (c), (d), and (e) of this clause, for examination, audit, or reproduction, until 3 years after final payment under this contract, or for any shorter period specified in Subpart 4.7, Contractor Records Retention, of the Federal Acquisition Regulation (FAR), or for any longer period required by statute or by other clauses of this contract. In addition--

(1) If this contract is completely or partially terminated, the records relating to the work terminated shall be made available for 3 years after any resulting final termination settlement; and

(2) Records relating to appeals under the DISPUTES clause or to litigation or the settlement of claims arising under or relating to this contract shall be made available until such appeals, litigation, or claims are finally resolved.

(g) The Contractor shall insert a clause containing all the terms of this clause, including this paragraph (g), in all subcontracts under this contract that exceed the simplified acquisition threshold, and--

- (1) That are cost-reimbursement incentive, time-and-materials, labor-hour, or price-redeterminable type or any combination of these;
- (2) For which cost or pricing data are required; or
- (3) That require the subcontractor to furnish reports as discussed in paragraph (e) of this clause.

The clause may be altered as necessary to identify properly the contracting parties and the Contracting Officer under the Government prime contract.

(FAR

52.215-2)

**197            SUBCONTRACTOR COST OR PRICING DATA (OCT 1997)**



(a) Before awarding any subcontract expected to exceed the threshold for submission of cost or pricing data at FAR 15.403-4, on the date of agreement on price or the date of award, whichever is later; or before pricing any subcontract modification involving a pricing adjustment expected to exceed the threshold for submission of cost or pricing data at FAR 15.403-4, the Contractor shall require the subcontractor to submit cost or pricing data (actually or by specific identification in writing), unless an exception under FAR 15.403-1 applies.

(b) The Contractor shall require the subcontractor to certify in substantially the form prescribed in FAR 15.406-2 that, to the best of its knowledge and belief, the data submitted under paragraph (a) of this clause were accurate, complete, and current as of the date of agreement on the negotiated price of the subcontract or subcontract modification.

(c) In each subcontract that exceeds the threshold for submission of cost or pricing data at FAR 15.403-4 when entered into, the Contractor shall insert either--

(1) The substance of this clause, including this paragraph (c), if paragraph (a) of this clause requires submission of cost or pricing data for the subcontract; or

(2) The substance of the clause at FAR 52.215-13, SUBCONTRACTOR COST OR PRICING DATA -MODIFICATIONS.

(FAR 52.215-12)

## **I98 PROTECTING THE GOVERNMENT'S INTERESTS WHEN SUBCONTRACTING WITH CONTRACTORS**

### **DEBARRED, SUSPENDED, OR PROPOSED FOR DEBARMENT (JUL 1995)**

(a) The Government suspends or debars Contractors to protect the Government's interests. The Contractor shall not enter into any subcontract in excess of \$25,000 with a Contractor that is debarred, suspended, or proposed for debarment unless there is a compelling reason to do so.

(b) The Contractor shall require each proposed first-tier subcontractor, whose subcontract will exceed \$25,000, to disclose to the Contractor, in writing, whether as of the time of award of the subcontract, the subcontractor, or its principals, is or is not debarred, suspended, or proposed for debarment by the Federal Government.

(c) A corporate officer or a designee of the Contractor shall notify the Contracting Officer, in writing, before entering into a subcontract with a party that is debarred, suspended, or proposed for debarment (see FAR 9.404 for information on the List of Parties Excluded from Federal Procurement and Nonprocurement Programs). The notice must include the following:

(1) The name of the subcontractor.

(2) The Contractor's knowledge of the reasons for the subcontractor being on the List of Parties Excluded from Federal Procurement and Nonprocurement Programs.

(3) The compelling reason(s) for doing business with the subcontractor notwithstanding its inclusion on the List of Parties Excluded from Federal Procurement and Nonprocurement Programs.

(4) The systems and procedures the Contractor has established to ensure that it is fully protecting the Government's interests when dealing with such subcontractor in view of the specific basis for the party's debarment, suspension, or proposed debarment.

(FAR 52.209-6)

## **I114 GOVERNMENT PROPERTY (FIXED-PRICE CONTRACTS) (DEC 1989)**

### **(a) GOVERNMENT-FURNISHED PROPERTY.**

(1) The Government shall deliver to the Contractor, for use in connection with and under the terms of this contract, the Government-furnished property described in the Schedule or specifications together with any related data and information that the Contractor may request and is reasonably required for the intended use of the property (hereinafter referred to as "Government-furnished property").

(2) The delivery or performance dates for this contract are based upon the expectation that Government-furnished property suitable for use (except for property furnished "as-is") will be delivered to the Contractor at the times stated in the Schedule or, if not so stated, in sufficient time to enable the Contractor to meet the contract's delivery or performance dates.

(3) If Government-furnished property is received by the Contractor in a condition not suitable for the intended use, the Contractor shall, upon receipt of it, notify the Contracting Officer, detailing the facts, and, as directed by the Contracting Officer and at Government expense, either repair, modify, return, or otherwise dispose

of the property. After completing the directed action and upon written request of the Contractor, the Contracting Officer shall make an equitable adjustment as provided in paragraph (h) of this clause.

(4) If Government-furnished property is not delivered to the Contractor by the required time, the Contracting Officer shall, upon the Contractor's timely written request, make a determination of the delay, if any, caused the Contractor and shall make an equitable adjustment in accordance with paragraph (h) of this clause.

**(b) CHANGES IN GOVERNMENT-FURNISHED PROPERTY.**

(1) The Contracting Officer may, by written notice, (i) decrease the Government-furnished property provided or to be provided under this contract, or (ii) substitute other Government-furnished property for the property to be provided by the Government, or to be acquired by the Contractor for the Government, under this contract. The Contractor shall promptly take such action as the Contracting Officer may direct regarding the removal, shipment, or disposal of the property covered by such notice.

(2) Upon the Contractor's written request, the Contracting Officer shall make an equitable adjustment to the contract in accordance with paragraph (h) of this clause, if the Government has agreed in the Schedule to make the property available for performing this contract and there is any--

- (i) Decrease or substitution in this property pursuant to subparagraph (b)(1) above; or
- (ii) Withdrawal of authority to use this property, if provided under any other contract or lease.

**(c) TITLE IN GOVERNMENT PROPERTY.**

(1) The Government shall retain title to all Government-furnished property.

(2) All Government-furnished property and all property acquired by the Contractor, title to which vests in the Government under this paragraph (collectively referred to as "Government property"), are subject to the provisions of this clause. However, special tooling accountable to this contract is subject to the provisions of the Special Tooling clause and is not subject to the provisions of this clause. Title to Government property shall not be affected by its incorporation into or attachment to any property not owned by the Government, nor shall Government property become a fixture or lose its identity as personal property by being attached to any real property.

(3) Title to each item of facilities and special test equipment acquired by the Contractor for the Government under this contract shall pass to and vest in the Government when its use in performing this contract commences or when the Government has paid for it, whichever is earlier, whether or not title previously vested in the Government.

(4) If this contract contains a provision directing the Contractor to purchase material for which the Government will reimburse the Contractor as a direct item of cost under this contract--

- (i) Title to material purchased from a vendor shall pass to and vest in the Government upon the vendor's delivery of such material; and
- (ii) Title to all other material shall pass to and vest in the Government upon--
  - (A) Issuance of the material for use in contract performance;
  - (B) Commencement of processing of the material or its use in contract performance; or
  - (C) Reimbursement of the cost of the material by the Government, whichever occurs first.

**(d) USE OF GOVERNMENT PROPERTY.** The Government property shall be used only for performing this contract, unless otherwise provided in this contract or approved by the Contracting Officer.

**(e) PROPERTY ADMINISTRATION.**

(1) The Contractor shall be responsible and accountable for all Government property provided under this contract and shall comply with Federal Acquisition Regulation (FAR) Subpart 45.5, as in effect on the date of this contract.

(2) The Contractor shall establish and maintain a program for the use, maintenance, repair, protection, and preservation of Government property in accordance with sound industrial practice and the applicable provisions of Subpart 45.5 of the FAR.

(3) If damage occurs to Government property, the risk of which has been assumed by the Government under this contract, the Government shall replace the items or the Contractor shall make such repairs as the Government directs. However, if the Contractor cannot effect such repairs within the time required, the Contractor shall dispose of the property as directed by the Contracting Officer. When any property for which the Government is responsible is replaced or repaired, the Contracting Officer shall make an equitable adjustment in accordance with paragraph (h) of this clause.

(4) The Contractor represents that the contract price does not include any amount for repairs or replacement for which the Government is responsible. Repair or replacement of property for which the Contractor is responsible shall be accomplished by the Contractor at its own expense.

(f) **ACCESS.** The Government and all its designees shall have access at all reasonable times to the premises in which any Government property is located for the purpose of inspecting the Government property.

(g) **LIMITED RISK OF LOSS.** Unless otherwise provided in this contract, the Contractor assumes the risk of, and shall be responsible for, any loss or destruction of, or damage to, Government property upon its delivery to the Contractor or upon passage of title to the Government under paragraph (c) of this clause. However, the Contractor is not responsible for reasonable wear and tear to Government property or for Government property properly consumed in performing this contract.

(h) **EQUITABLE ADJUSTMENT.** When this clause specifies an equitable adjustment, it shall be made to any affected contract provision in accordance with the procedures of the Changes clause. When appropriate, the Contracting Officer may initiate an equitable adjustment in favor of the Government. The right to an equitable adjustment shall be the Contractor's exclusive remedy. The Government shall not be liable to suit for breach of contract for--

- (1) Any delay in delivery of Government-furnished property;
- (2) Delivery of Government-furnished property in a condition not suitable for its intended use;
- (3) A decrease in or substitution of Government-furnished property; or
- (4) Failure to repair or replace Government property for which the Government is responsible.

(i) **FINAL ACCOUNTING AND DISPOSITION OF GOVERNMENT PROPERTY.** Upon completing this contract, or at such earlier dates as may be fixed by the Contracting Officer, the Contractor shall submit, in a form acceptable to the Contracting Officer, inventory schedules covering all items of Government property (including any resulting scrap) not consumed in performing this contract or delivered to the Government. The Contractor shall prepare for shipment, deliver f.o.b. origin, or dispose of the Government property as may be directed or authorized by the Contracting Officer. The net proceeds of any such disposal shall be credited to the contract price or shall be paid to the Government as the Contracting Officer directs.

(j) **ABANDONMENT AND RESTORATION OF CONTRACTOR'S PREMISES.** Unless otherwise provided herein, the Government--

- (1) May abandon any Government property in place, at which time all obligations of the Government regarding such abandoned property shall cease; and
- (2) Has no obligation to restore or rehabilitate the Contractor's premises under any circumstances (e.g., abandonment, disposition upon completion of need, or upon contract completion). However, if the Government-furnished property (listed in the Schedule or specifications) is withdrawn or is unsuitable for the intended use, or if other Government property is substituted, then the equitable adjustment under paragraph (h) of this clause may properly include restoration or rehabilitation costs.

(k) **COMMUNICATIONS.** All communications under this clause shall be in writing.

(l) **OVERSEAS CONTRACTS.** If this contract is to be performed outside of the United States of America, its territories, or possessions, the words "Government" and "Government-furnished" (wherever they appear in this clause) shall be construed as "United States Government" and "United States Government-furnished," respectively.

(FAR 52.245-2)

## **I116 RESPONSIBILITY FOR GOVERNMENT-OWNED PETROLEUM PRODUCTS (DESC APR 1997)**

(a) Government-owned petroleum products received, stored, and transported under this contract are governed by the provisions of this clause.

(b) Title to any Government-owned petroleum products in the possession of or under the custody of the Contractor by reason of this contract, which is hereinafter referred to in this clause as "such property," shall at all times remain in the Government, and such property shall be used only for the purposes set forth in this contract. The Government shall at all times have access to the premises wherein any such property is located.

(c) The Contractor shall protect and preserve such property in a manner consistent with sound industrial practice.

(d) At the end of the contract period the Government may abandon any Government-owned petroleum products in place, at which time all obligations of the Government regarding such abandoned petroleum products shall cease. The contract price shall be reduced to reflect the fair market value of any abandoned petroleum products. If an agreement as to compensation for abandoned petroleum products cannot be reached in a timely manner, the Contracting Officer will make a formal determination. The decision will be subject to resolution

in accordance with paragraph (d), Disputes, of the CONTRACT TERMS AND CONDITIONS - COMMERCIAL ITEMS clause.

(e) The Contractor shall not be liable for loss of or damage to all such property while in the possession of or under the custody of the Contractor by reason of this contract, or for expenses incidental to such loss or damage, except that the Contractor shall be liable for any such loss or damage (including expenses incidental thereto)--

(1) Which results from negligence, or bad faith, or willful misconduct of the Contractor, its employees, or agents; or

(2) Which results from a risk that is in fact covered by insurance or for which the Contractor is otherwise reimbursed, but the Contractor in such case shall be responsible only to the extent of such insurance or reimbursement.

(f) Except for those risks assumed by the Contractor pursuant to subparagraph (e)(1) of this clause, the Contractor represents and warrants that the prices stated in the Schedule do not include the cost of insurance covering risk or loss of or damage to such property while in the possession of or under the custody of the Contractor by reason of this contract, nor any provision for a reserve to cover such risk. In the event the Contractor is reimbursed or compensated for any loss or damage to such property, it shall reimburse the Government. The Contractor shall do nothing to prejudice the Government's rights to recover against third parties for any such loss or damage and, upon the request of the Contracting Officer, shall, at the Government's expense, furnish to the Government all reasonable assistance and cooperation (including the prosecution of suit and the execution of instruments of assignment in favor of the Government) in obtaining recovery.

(DESC 52.245-9F25)

#### **I116.01 LIABILITY FOR FUEL SPILLS (DESC OCT 1998)**

The Contractor shall take all measures required by law and good business practice to prevent fuel spills (including, but not limited to, any spilling, leaking, pumping, pouring, emitting, emptying, or dumping into or onto any land or water). In the event that the Contractor's failure to take such measures results in a fuel spill, the Contractor shall be liable for the costs of spill containment, cleanup, and disposal. In addition, the Contractor shall reimburse the Government for any resulting fines or penalties. For purposes of this clause, the term **fuel** includes all petroleum and additive products.

(DESC 52.223-9F40)

#### **I119.06 PROPERTY CONTROL RECORDS (OVERSEAS) (DESC SEP 1989)**

##### **(a) INTRODUCTION.**

(1) The Contractor shall maintain property control records of Government-owned product in its possession or under its custody as provided herein. Such property control records shall be subject to audit by the U.S. Government.

(2) The Contractor shall provide the required transaction data shown under (b)(2) below.

##### **(b) DEFENSE FUEL AUTOMATED MANAGEMENT SYSTEM (DFAMS)**

##### **REQUIREMENTS.**

(1) The Contractor shall prepare all necessary documentation for each transaction affecting the inventory of Government-owned product in its possession by virtue of this contract. The Contractor shall transmit one copy of each document prepared to the appropriate Defense Fuel Region (DFR) or Inventory Control Point (ICP) on a daily/weekly basis as prescribed by the DFR. A transaction sequence number will be shown in pencil in the upper right hand corner of the document. The DFR or ICP may also telephone the Contractor on a daily basis (Monday through Friday, except holidays) to obtain information concerning product transactions processed during the previous as well as current day. The DFR will provide the Contractor with exact formats and detailed instructions for reporting each transaction.

(2) Under the DFAMS, all transactions are recorded by Document Identifier Code (DIC). The most commonly used codes are explained below. The DFR will provide instructions for any transactions which may be processed but are not shown below.

DIC

TRANSACTIONS

REQUIRED  
DOCUMENT\*

### **SHIPMENTS**

P21	Reimbursable shipment from a Defense Fuel Supply Point (DFSP) to a Service/Agency activity	DD Form 250 DD Form 250-1 DD Form 1348-1
P22	Shipment between DFSPs	DD Form 250 DD Form 250-1 DD Form 1348-1
P28	Shipment from a DFSP to a Defense Property Disposal Office	DD Form 250 DD Form 1348-1
P29	Shipment from a DFSP to a Government or Contractor Testing Facility	DD Form 250 DD Form 1348-1

### **RECEIPTS**

P30	Receipt from another DFSC procurement contract	DD Form 250 DD Form 250-1
P32	Receipt from a DFSP	DD Form 250 DD Form 250-1 DD Form 1348-1
P39	Return from a using activity, with or without credit	DD Form 250 DD Form 250-1 DD Form 1348-1

\* or successor document

### **INVENTORY**

P41	Physical Inventory of the DFSP as of 0800 hours on the first calendar day of the month, but Milstrip requisition must contain the Julian Date for the last day of the month being reported.	DD Form 1348-1
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### **SHIPMENTS**

P42	Inventory Adjustment for the DFSP	
	(i) All determinable losses such as spills, line breaks, nonrecoverable tank bottoms, major disasters, combat losses, etc.	DD Form 1348-1
(Computer Generated)	(ii) Normal DFSP operating gains or losses	NONE
	(iii) DFSP operating gain/loss exceeding established tolerances	DD Form 1348-1
P43	Condition or Identity Change	
	(i) Downgrading	DD Form 1348-1

	(ii) Regrading	DD Form 1348-1
	(iii) Contamination	DD Form 1348-1
NO CODE (Computer Generated)	DFSP Book Inventory	NONE

(3) At the end of each month, the DFR or ICP will forward two copies of the Inventory Reconciliation Document Register which lists all transactions processed during the month. The Inventory Reconciliation Register will contain the following statement to be signed by the appropriate individuals:

"I certify that the transactions reflected on this document register are complete and accurate and represent all actions affecting this account during the month in the sequence shown. Each transaction except the final automatic reconciliation adjustment is supported by a valid auditable source document."

\_\_\_\_\_  
Name/Grade/Signature of DFSC Authorized Representative/QR/Responsible Officer/Contractor Representative

Should the above statement be missing, it will be typed on the Inventory Reconciliation Document Register by the

Contractor and signed accordingly. All Inventory Adjustment Documents (P42) must contain the following statement:

"Contractor statement as to cause of variance"

Statement: \_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_

Signed

\_\_\_\_\_

Contractor Representative

Signed

\_\_\_\_\_

(Concur) (Nonconcur)  
(Explain Nonconcurrences)  
Quality Representative (QR)

(4) Within five days after receipt of the Inventory Reconciliation Document Register, the Contractor will return one signed copy of the register to the DFR or ICP. The Contractor will retain one signed copy for its files and will attach all supporting documents to it. All supporting documents will have the appropriate DIC printed in the right hand corner.

(c) **OTHER REQUIREMENTS.**

(1) **STORAGE TANK OUT OF SERVICE.** If a storage tank is removed from service, the Contractor will immediately notify the Property Administrator at the DFR, in writing, including the date and time the tank was removed from service. The Contractor shall request disposition instructions for any unrecoverable tank

bottom quantity. This request shall be accompanied by the QR's estimation of the unrecoverable tank bottom quantity and the QR's recommendation(s) for disposition.

(2) **REPORTING FUEL ADDITIVES AND SLOP FUEL.** Government-owned fuel additives and slop fuel stock at the DFSP will be treated as separate and distinct items, and all transactions will be documented as outlined in subparagraph (b)(2) above. These products will be recorded in gallons and reported under the approved National Stock Number for a unit of issue in gallons. Documentation for conductivity additive will be prepared in gallon increments only (no fraction gallon increments). When less than a gallon is issued, preparation of the documents will be delayed until a gallon has been issued.

(3) **STATEMENT OF AUTHORIZED SIGNATURES.** The Contractor shall furnish a statement containing the names and handwritten signatures of persons authorized by the Contractor to receive and accept Government-owned product or property to the DFR Property Administrator.

(4) **SUBMISSION OF WEEKLY INVENTORY REPORTS.** The Contractor shall submit weekly inventory reports to the designated DFR or ICP. In cases where storage is inactive, the Contractor shall be required to submit weekly inventory reports only when there has been activity, receipts, or issues during the week. The method of transmitting reports and the cut-off date of the report will be decided by coordination between the DFR and the Contractor.

(5) **CHANGE IN DFSP OPERATOR.** Transfer of residual inventory from expired contracts will be made regardless of whether there is a change in Contractors. The transfer of DFSP product will be accomplished by the following steps:

(i) The outgoing Contractor, the new Contractor, and the QR will jointly gauge all tanks and will calculate the physical inventory.

(ii) Upon completion of the inventory, a DD Form 1348-1 will be completed for each grade of fuel.

(iii) The following certification will be typed on each DD Form 1348-1 and signed by the appropriate individuals:

**CERTIFICATION.** The inventory recorded on this DD Form 1348-1 has been transferred from contract

on (old) \_\_\_\_\_ TO CONTRACT (new) \_\_\_\_\_

(Date) \_\_\_\_\_

Signature \_\_\_\_\_ Signature

\_\_\_\_\_  
(Outgoing Contractor)

\_\_\_\_\_  
(New Contractor)

**CERTIFICATION.** I have witnessed the transfer of the inventory recorded on this DD Form 1348-1 as stated by the Contractors.

Signature \_\_\_\_\_  
(QR)

(iv) The Contractor will telephone this information into the DFR or ICP and forward one copy of each DD Form 1348-1 to the DFR.

(v) The DFR or ICP will forward three copies of the Inventory Reconciliation Document Register covering the transfer month to the outgoing Contractor. The outgoing Contractor will apply appropriate certifications to the Inventory Reconciliation Document Register and will retain one copy, give one copy to the new Contractor, and return the third copy to the DFR or ICP.

(6) **RETENTION OF ACCOUNTABLE RECORDS AND DOCUMENTS.** All records and documents identified above are Defense Energy Support Center accountable records and must be retained for two

years after expiration of this contract. Excluded are customer requisitions which only need to be retained for a period of six months or until the expiration of this contract, whichever is less.

(DESC 52.245-9F35)

**I132.02 ORDER OF PRECEDENCE - UNIFORM CONTRACT FORMAT (OCT 1997)**

Any inconsistency in this solicitation or contract shall be resolved by giving precedence in the following order:

- (a) The Schedule (excluding the specifications);
- (b) Representations and other instructions;
- (c) Contract clauses;
- (d) Other documents, exhibits, and attachments; and
- (e) The specifications.

(FAR 52.215-8)

**I147 DEMURRAGE (DESC NOV 1989)**

Subject to paragraph (c) of the DEFAULT clause, the Contractor shall pay to the vessel operator or carrier, or reimburse the Government for, any demurrage incurred by reason of the Contractor's failure to comply with the provisions of this contract.

(DESC 52.247-9FP5)

**I176 COST ACCOUNTING STANDARDS (APR 1998)**

(a) Unless the contract is exempt under 48 CFR 9903.201-1 and 9903.201-2, the provisions of 48 CFR 9903 are incorporated herein by reference and the Contractor, in connection with this contract, shall--

(1) **(CAS-covered Contracts Only).** By submission of a Disclosure Statement, disclose in writing the Contractor's cost accounting practices as required by 48 CFR 9903.202-1 through 9903.202-5, including methods of distinguishing direct costs from indirect costs and the basis used for allocating indirect costs. The practices disclosed for this contract shall be the same as the practices currently disclosed and applied on all other contracts and subcontracts being performed by the Contractor and which contain a Cost Accounting Standards (CAS) clause. If the Contractor has notified the Contracting Officer that the Disclosure Statement contains trade secrets and commercial or financial information which is privileged and confidential, the Disclosure Statement shall be protected and shall not be released outside of the Government.

(2) Follow consistently the Contractor's cost accounting practices in accumulating and reporting contract performance cost data concerning this contract. If any change in cost accounting practices is made for the purposes of any contract or subcontract subject to CAS requirements, the change must be applied prospectively to this contract and the Disclosure Statement must be amended accordingly. If the contract price or cost allowance of this contract is affected by such changes, adjustment shall be made in accordance with subparagraph (a)(4) or (a)(5) of this clause, as appropriate.

(3) Comply with all CAS, including any modifications and interpretations indicated thereto contained in 48 CFR 9904, in effect on the date of award of this contract or, if the Contractor has submitted cost or pricing data, on the date of final agreement on price as shown on the Contractor's signed certificate of current cost or pricing data. The Contractor shall also comply with any CAS (or modification to CAS) which hereafter become applicable to a contract or subcontract of the Contractor. Such compliance shall be required prospectively from the date of applicability to such contract or subcontract.

(4) (i) Agree to an equitable adjustment as provided in the CHANGES clause of this contract if the contract cost is affected by a change which, pursuant to subparagraph (a)(3) of this clause, the Contractor is required to make to the Contractor's established cost accounting practices.

(ii) Negotiate with the Contracting Officer to determine the terms and conditions under which a change may be made to a cost accounting practice, other than a change made under other provisions of subparagraph (a)(4) of this clause; PROVIDED, that no agreement may be made under this provision that will increase costs paid by the United States.

(iii) When the parties agree to a change to a cost accounting practice, other than a change under subdivision (a)(4)(i) of this clause, negotiate an equitable adjustment as provided in the CHANGES clause of this contract.



(5) Agree to an adjustment of the contract price or cost allowance, as appropriate, if the Contractor or a subcontractor fails to comply with an applicable Cost Accounting Standard, or to follow any cost accounting practice consistently and such failure results in any increased costs paid by the United States. Such adjustment shall provide for recovery of the increased costs to the United States, together with interest thereon computed at the annual rate established under section 6621 of the Internal Revenue Code of 1986 (26 U.S.C. 6621) for such period, from the time the payment by the United States was made to the time the adjustment is effected. In no case shall the Government recover costs greater than the increased cost to the Government, in the aggregate, on the relevant contracts subject to the price adjustment, unless the Contractor made a change in its cost accounting practices of which it was aware or should have been aware at the time of price negotiations and which it failed to disclose to the Government.

(b) If the parties fail to agree whether the Contractor or a subcontractor has complied with an applicable CAS in 48 CFR 9904, or a CAS rule or regulation in 48 CFR 9903 and as to any cost adjustment demanded by the United States, such failure to agree will constitute a dispute under the Contract Disputes Act (41 U.S.C. 601).

(c) The Contractor shall permit any authorized representatives of the Government to examine and make copies of any documents, papers, or records relating to compliance with the requirements of this clause.

(d) The Contractor shall include in all negotiated subcontracts which the Contractor enters into, the substance of this clause, except paragraph (b), and shall require such inclusion in all other subcontracts, of any tier, including the obligation to comply with all CAS in effect on the subcontractor's award date or if the subcontractor has submitted cost or pricing data, on the date of final agreement on price as shown on the subcontractor's signed Certificate of Current Cost or Pricing Data. If the subcontract is awarded to a business unit which pursuant to 48 CFR 9903.201-2 is subject to other types of CAS coverage, the substance of the applicable clause set forth in subsection 30.201-4 of the Federal Acquisition Regulation shall be inserted. This requirement shall apply only to negotiated subcontracts in excess of \$500,000, except that the requirements shall not apply to negotiated subcontracts otherwise exempt from the requirement to include a CAS clause as specified in 48 CFR 9903.201-1.

(FAR 52.230-2)

#### **I185.01 SECONDARY ARAB BOYCOTT OF ISRAEL (JUN 1992)**

(a) **DEFINITIONS.** As used in this clause--

**Foreign person** means any person other than a United States person as defined in Section 16(2) of the Export Administration Act of 1979 (50 U.S.C. App. Sec 2415).

**United States person** is defined in Section 16(2) of the Export Administration Act of 1979 and means any United States resident or national (other than an individual resident outside the United States and employed by other than a United States person), any domestic concern (including any permanent domestic establishment of any foreign concern), and any foreign subsidiary or affiliate (including any permanent foreign establishment) of any domestic concern which is controlled in fact by such domestic concern, as determined under regulations of the President.

(b) **CERTIFICATION.**

By submitting this offer, the offeror, if a foreign person, company or entity, certifies that it--

(1) Does not comply with the secondary Arab boycott of Israel; and

(2) Is not taking or knowingly agreeing to take any action, with respect to the secondary boycott of Israel by Arab countries, which 50 U.S.C. App. Sec 2407(a) prohibits a United States person from taking.

(DFARS 252.225-7031)

#### **I198 PRICING OF CONTRACT MODIFICATIONS (DEC 1991)**

When costs are a factor in any price adjustment under this contract, the contract cost principles and procedures in FAR Part 31 and DFARS Part 231, in effect on the date of this contract, apply.

(DFARS 252.243-7001)

#### **I209.01 OPTION TO RENEW (SERVICES) (DESC APR 1997)**

The Government shall have the option to renew this contract upon the same terms and conditions for three successive periods of one year each. The Government shall issue written notice of its exercise of this option to renew at least 30 days prior to the expiration date of this contract or any renewal thereof.

(DESC 52.217-9F70)

**I209.03 EXTENSION PROVISION (STORAGE) (DESC SEP 1991)**

The Government shall have the right to extend this contract upon the same terms and conditions on a month-by-month basis for a total of no more than six months. Notice of extensions may be furnished any time prior to the expiration of this contract or any extensions thereof. The foregoing extensions may be exercised by the Government only if (a) a decision is made by the Government that the additional time is required to deplete the Government-owned stocks stored in the facility, (b) a contract for follow-on services is terminated for default by the Government prior to commencement of services, or (c) where the extension is required to sustain performance because of difficulties encountered in award of the follow-on contract.

(DESC 52.217-9F40)

**I225 PAYMENTS (APR 1984)**

The Government shall pay the Contractor, upon the submission of proper invoices or vouchers, the prices stipulated in this contract for supplies delivered and accepted or services rendered and accepted, less any deductions provided in this contract. Unless otherwise specified in this contract, payment shall be made on partial deliveries accepted by the Government if--

- (a) The amount due on the deliveries warrants it; or
- (b) The Contractor requests it and the amount due on the deliveries is at least \$1,000 or 50 percent of the total contract price.

(FAR 52.232-1)

**I227.01 OBLIGATION OF FUNDS (MULTIYEAR) (DESC FEB 1985)**

The time within which the Government shall obligate funds pursuant to paragraph (a) of the LIMITATION OF PRICE AND CONTRACTOR OBLIGATIONS clause shall be at least 30 days prior to expiration of the first program year requirement or any subsequent renewal thereof.

(DESC 52.232-9F35)

**I251 ANTI-KICKBACK PROCEDURES (JUL 1995)**

**(a) DEFINITIONS.**

(1) **Kickback**, as used in this clause, means any money, fee, commission, credit, gift, gratuity, thing of value, or compensation of any kind which is provided, directly or indirectly, to any prime Contractor, prime Contractor employee, subcontractor, or subcontractor employee for the purpose of improperly obtaining or rewarding favorable treatment in connection with a prime contract or in connection with a subcontract relating to a prime contract.

(2) **Person**, as used in this clause, means a corporation, partnership, business association of any kind, trust, joint-stock company, or individual.

(3) **Prime Contract**, as used in this clause, means a contract or contractual action entered into by the United States for the purpose of obtaining supplies, materials, equipment, or services of any kind.

(4) **Prime Contractor**, as used in this clause, means a person who has entered into a prime contract with the United States.

(5) **Prime Contractor Employee**, as used in this clause, means any officer, partner, employee, or agent of a prime Contractor.

(6) **Subcontract**, as used in this clause, means a contract or contractual action entered into by a prime Contractor or subcontractor for the purpose of obtaining supplies, materials, equipment, or services of any kind under a prime contract.

(7) **Subcontractor**, as used in this clause, (1) means any person, other than the prime Contractor, who offers to furnish or furnishes any supplies, materials, equipment, or services of any kind under a prime contract or a subcontract entered into in connection with such prime contract; and (2) includes any person who offers to furnish or furnishes general supplies to the prime Contractor or a higher tier subcontractor.

(8) **Subcontractor Employee**, as used in this clause, means any officer, partner, employee, or agent of a subcontractor.

- (b) The Anti-Kickback Act of 1986 (41 U.S.C. 51-58) (the Act) prohibits any person from--

(1) Providing or attempting to provide or offering to provide any kickback;  
(2) Soliciting, accepting, or attempting to accept any kickback; or  
(3) Including, directly or indirectly, the amount of any kickback in the contract price charged by a prime Contractor to the United States or in the contract price charged by a subcontractor to a prime Contractor or higher tier subcontractor.

(c) (1) The Contractor shall have in place and follow reasonable procedures designed to prevent and detect possible violations described in paragraph (b) of this clause in its own operations and direct business relationships.

(2) When the Contractor has reasonable grounds to believe that a violation described in paragraph (b) above may have occurred, the Contractor shall promptly report in writing the possible violation. Such reports shall be made to the inspector general of the contracting agency, the head of the contracting agency if the agency does not have an inspector general, or the Department of Justice.

(3) The Contractor shall cooperate fully with any Federal agency investigating a possible violation described in paragraph (b) of this clause.

(4) The Contracting Officer may (i) offset the amount of the kickback against any monies owed by the United States under the prime contract and/or (ii) direct that the prime Contractor withhold from sums owed a subcontractor under the prime contract, monies withheld, the amount of the kickback. The Contracting Officer may order that monies withheld under subdivision (c)(4)(ii) of this clause be paid over to the Government unless the Government has already offset those monies under subdivision (c)(4)(i) of this clause. In either case, the prime Contractor shall notify the Contracting Officer when the monies are withheld.

(5) The Contractor agrees to incorporate the substance of this clause, including this subparagraph (c)(5) but excepting subparagraph (c)(1), in all subcontracts under this contract that exceed \$100,000.

(FAR 52.203-7)

**I257 INCONSISTENCY BETWEEN ENGLISH VERSION AND TRANSLATION OF CONTRACT (AUG 1989)**

In the event of inconsistency between any terms of this contract and any translation thereof into another language, the English language meaning shall control.

(FAR 52.225-14)

**I285 SUBCONTRACTING WITH FIRMS THAT ARE OWNED OR CONTROLLED BY THE GOVERNMENT OF A TERRORIST COUNTRY (MAR 1998)**

(a) Unless the Government determines that there is a compelling reason to do so, the Contractor shall not enter into any subcontract in excess of \$25,000 with a firm, or a subsidiary of a firm, that is identified on the List of Parties Excluded from Federal Procurement and Nonprocurement Programs as being ineligible for the award of Defense contracts or subcontracts because it is owned or controlled by the government of a terrorist country.

(b) A corporate officer or a designee of the Contractor shall notify the Contracting Officer, in writing, before entering into a subcontract with a party that is identified on the List of Parties Excluded from Federal Procurement and Nonprocurement Programs as being ineligible for the award of Defense contracts or subcontracts because it is owned or controlled by the government of a terrorist country. The notice must include the name of the proposed subcontractor and the compelling reason(s) for doing business with the subcontractor notwithstanding its inclusion on the List of Parties Excluded from Federal Procurement and Nonprocurement Programs.

(DFARS 252.209-7004)

**SECTION J - LIST OF ATTACHMENTS**

**THE DOCUMENTS LISTED BELOW ARE HEREBY MADE A PART OF THIS SOLICITATION**

FORM	TITLE	LOCATION
DD1707	Information to Offerors or Quoters	Cover Page
SF33	Solicitation, Offer, and Award	Page 1
	Testing of Petroleum Products	Attachment 1
	Certification Package	Attachment 2

## **SECTION K - REPRESENTATIONS, CERTIFICATIONS, AND OTHER STATEMENTS OF OFFERORS**

### **K1.06 DATA UNIVERSAL NUMBERING SYSTEM (DUNS) NUMBER (JUN 1999)**

(a) The offeror shall enter, in the block with its name and address on the cover page of its offer, the annotation “**DUNS**” followed by the DUNS number that identifies the offeror’s name and address exactly as stated in the offer. The DUNS number is a nine-digit number assigned by Dun and Bradstreet Information Services.

(b) If the offeror does not have a DUNS number, it should contact Dun and Bradstreet directly to obtain one. A DUNS number will be provided immediately by telephone at no charge to the offeror. For information on obtaining a DUNS number, the offeror, if located within the United States, should call Dun and Bradstreet at **1-800-333-0505**. The offeror should be prepared to provide the following information:

- (1) Company name;
- (2) Company address;
- (3) Company telephone number;
- (4) Line of business;
- (5) Chief executive officer/key manager;
- (6) Date the company was started;
- (7) Number of people employed by the company; and
- (8) Company affiliation.

(c) Offerors located outside the United States may obtain the location and phone number of the local Dun and Bradstreet Information Services office from the Internet Home Page at <http://www.customerservice@dnb.com>. If an offeror is unable to locate a local service center, it may send an email to Dun and Bradstreet at [globalinfo@mail.dnb.com](mailto:globalinfo@mail.dnb.com).

(FAR 52.204-6)

### **K7 COST ACCOUNTING STANDARDS NOTICES AND CERTIFICATION (APR 1998)**

**NOTE:** This notice does not apply to small businesses or foreign governments.

This notice is in three parts, identified by Roman numerals I through III.

Offerors shall examine each part and provide the requested information in order to determine Cost Accounting Standards (CAS) requirements applicable to any resultant contract.

If the offeror is an educational institution, Part II does not apply unless the contemplated contract will be subject to full or modified CAS coverage pursuant to 48 CFR 9903.201-2(c)(5) or 9903.201-2(c)(6), respectively.

#### **I. DISCLOSURE STATEMENT - COST ACCOUNTING PRACTICES AND CERTIFICATION**

(a) Any contract in excess of \$500,000 resulting from this solicitation, will be subject to the requirements of the Cost Accounting Standards Board (48 CFR Chapter 99), except for those contracts that are exempt as specified in 48 CFR 9903.201-1.

*(b) Any offeror submitting a proposal which, if accepted, will result in a contract subject to the requirements of 48 CFR Chapter 99 must, as a condition of contracting, submit a Disclosure Statement as required by 48 CFR 9903.202. When required, the Disclosure Statement must be submitted as a part of the offeror's proposal under this solicitation unless the offeror has already submitted a Disclosure Statement disclosing the practices used in connection with the pricing of this proposal. If an applicable Disclosure Statement has already been submitted, the offeror may satisfy the requirement for submission by providing the information requested in paragraph (c) of Part I of this provision.*

**CAUTION:** In the absence of specific regulations or agreement, a practice disclosed in a Disclosure Statement shall not, by virtue of such disclosure, be deemed to be a proper, approved, or agreed-to practice for pricing proposals or accumulating and reporting contract performance cost data.

(c) Check the appropriate box below:

☐ (1) **CERTIFICATE OF CONCURRENT SUBMISSION OF DISCLOSURE STATEMENT.**

The offeror hereby certifies that, as a part of the offer, copies of the Disclosure Statement have been submitted as follows: (i) original and one copy to the cognizant Administrative Contracting Officer

(ACO) or cognizant Federal agency official authorized to act in that capacity (Federal official), as applicable, and (ii) one copy to the cognizant contract auditor.

(Disclosure must be on Form Number CASB DS-1 or CASB DS-2, as applicable. Forms may be obtained from the cognizant ACO or Federal official and/or from the loose-leaf version of the Federal Acquisition Regulation.)

Date of Disclosure Statement:

\_\_\_\_\_  
Name and address of cognizant ACO or Federal official where filed:

\_\_\_\_\_  
The offeror further certifies that practices used in estimating costs in pricing this proposal are consistent with the cost accounting practices disclosed in the Disclosure Statement.

☐ (2) **CERTIFICATE OF PREVIOUSLY SUBMITTED DISCLOSURE STATEMENT.**

The offeror hereby certifies that Disclosure Statement was filed as follows:

Date of Disclosure Statement:

\_\_\_\_\_  
Name and address of cognizant ACO or Federal official where filed:

\_\_\_\_\_  
The offeror further certifies that the practices used in estimating costs in pricing this proposal are consistent with the cost accounting practices disclosed in the applicable Disclosure Statement.

☐ (3) **CERTIFICATE OF MONETARY EXEMPTION.**

The offeror hereby certifies that the offeror, together with all divisions, subsidiaries, and affiliates under common control, did not receive net awards of negotiated prime contracts and subcontracts subject to CAS totaling more than \$25 million (of which at least one award exceeded \$1 million) in the cost accounting period immediately preceding the period in which this proposal was submitted. The offeror further certifies that if such status changes before an award resulting from this proposal, the offeror will advise the Contracting Officer immediately.

☐ (4) **CERTIFICATE OF INTERIM EXEMPTION.**

The offeror hereby certifies that (i) the offeror first exceeded the monetary exemption for disclosure, as defined in (3) of this subsection, in the cost accounting period immediately preceding the period in which this offer was submitted and (ii) in accordance with 48 CFR 9903.202-1, the offeror is not yet required to submit a Disclosure Statement. The offeror further certifies that if an award resulting from this proposal has not been made within 90 days after the end of that period, the offeror will immediately submit a revised certificate to the Contracting Officer, in the form specified under subparagraph (c)(1) or (c)(2) of Part I of this provision, as appropriate, to verify submission of a completed Disclosure Statement.

**CAUTION:** Offerors currently required to disclose because they were awarded a CAS-covered prime contract or subcontract of \$25 million or more in the current cost accounting period may not claim this exemption (4). Further, the exemption applies only in connection with proposals submitted before expiration of the 90-day period following the cost accounting period in which the monetary exemption was exceeded.

## **II. COST ACCOUNTING STANDARDS - ELIGIBILITY FOR MODIFIED CONTRACT COVERAGE**

If the offeror is eligible to use the modified provisions of 48 CFR 9903.201-2(b) and elects to do so, the offeror shall indicate by checking the box below. Checking the box below shall mean that the resultant contract is subject to the DISCLOSURE AND CONSISTENCY OF COST ACCOUNTING PRACTICES clause in lieu of the COST ACCOUNTING STANDARDS clause.

☐ The offeror hereby claims an exemption from the COST ACCOUNTING STANDARDS clause under the provisions of 48 CFR 9903.201-2(b) and certifies that the offeror is eligible for use of the DISCLOSURE AND CONSISTENCY OF COST ACCOUNTING PRACTICES clause because during the cost accounting period immediately preceding the period in which this proposal was submitted, the offeror received less than \$25 million in awards of CAS-covered prime contracts and subcontracts, or the offeror did not receive a single CAS-covered award exceeding \$1 million. The offeror further certifies that if such status changes before an award resulting from this proposal, the offeror will advise the Contracting Officer immediately.

**CAUTION:** An offeror may not claim the above eligibility for modified contract coverage if this proposal is expected to result in the award of a CAS-covered contract of \$25 million or more or if, during its current cost accounting period, the offeror has been awarded a single CAS-covered prime contract or subcontract of \$25 million or more.

### **III. ADDITIONAL COST ACCOUNTING STANDARDS APPLICABLE TO EXISTING CONTRACTS**

The offeror shall indicate below whether award of the contemplated contract would, in accordance with subparagraph (a)(3) of the COST ACCOUNTING STANDARDS clause, require a change in established cost accounting practices affecting existing contracts and subcontracts.

☐ YES

☐ NO

(FAR 52.230-1)

#### **K15.03 CERTIFICATE OF INDEPENDENT PRICE DETERMINATION (APR 1985)**

(a) The offeror certifies that--

(1) The prices in this offer have been arrived at independently, without, for the purpose of restricting competition, any consultation, communication, or agreement with any other offeror or competitor relating to (i) those prices, (ii) the intention to submit an offer, or (iii) the methods or factors used to calculate the prices offered;

(2) The prices in this offer have not been and will not be knowingly disclosed by the offeror, directly or indirectly, to any other offeror or competitor before bid opening (in the case of a sealed bid solicitation) or contract award (in the case of a negotiated solicitation) unless otherwise required by law; and

(3) No attempt has been made or will be made by the offeror to induce any other concern to submit or not to submit an offer for the purpose of restricting competition.

(b) Each signature on the offer is considered to be a certification by the signatory that the signatory--

(1) Is the person in the offeror's organization responsible for determining the prices being offered in this bid or proposal, and that the signatory has not participated and will not participate in any action contrary to subparagraphs (a)(1) through (a)(3) above; or

(2) (i) Has been authorized, in writing, to act as agent for the following principals in certifying that those principals have not participated, and will not participate in any action contrary to subparagraphs (a)(1) through (a)(3) above \_\_\_\_\_

[insert full name of person(s) in the offeror's organization responsible for determining the prices offered in this bid or proposal, and the title of his or her position in the offeror's organization];

(ii) As an authorized agent, does certify that the principals named in subdivision (b)(2)(i) above have not participated, and will not participate, in any action contrary to subparagraphs (a)(1) through (a)(3) above; and

(iii) As an agent, has not personally participated, and will not participate, in any action contrary to subparagraphs (a)(1) through (a)(3) above.

(c) If the offeror deletes or modifies subparagraph (a)(2) above, the offeror must furnish with its offer a signed statement setting forth in detail the circumstances of the disclosure.

(FAR 52.203-2)

#### **K33.01 AUTHORIZED NEGOTIATORS (DESC JAN 1998)**

The first page of the offer must show names, titles, and telephone and facsimile numbers (and electronic addresses if available) of persons authorized to negotiate with the Government on the offeror's behalf in connection with this solicitation. The offeror or quoter represents that the following persons are authorized to negotiate on its behalf with the Government in connection with this request for proposals or quotations.

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(DESC 52.215-9F28)

**K45.01 FACSIMILE OR ELECTRONIC INVOICING (DESC JAN 1998)**

**(a) FACSIMILE INVOICING.**

(1) Submission of invoices by facsimile (FAX) is authorized when the offeror will utilize this method of invoicing at all times.

(2) Offeror shall indicate whether or not he intends to submit invoices via FAX:

[ ] YES [ ] NO

(3) See the SUBMISSION OF INVOICES FOR PAYMENT clause for FAX invoicing procedures.

**(4) RETURN OF INVOICES BY THE PAYING OFFICE.**

(i) Invoices deemed improper in accordance with the Prompt Payment Act may be returned to the offeror via FAX with the reason for return.

(ii) The offeror's FAX number for returning improper invoices is--

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(For overseas locations, include the country code)

**(b) ELECTRONIC INVOICING (EDI)**

(1) Electronic submission of invoices via Electronic Data Interchange (EDI) for all applicable items (as defined in the SUBMISSION OF INVOICES FOR PAYMENT clause) is authorized when the offeror will utilize this method of invoicing at all times for those affected items.

(2) The offeror shall indicate whether it intends to submit electronic invoices via EDI.

[ ] YES [ ] NO

(3) See the SUBMISSION OF INVOICES FOR PAYMENT for electronic invoicing procedures.

(DESC 52.232-9F20)

**K85 DISCLOSURE OF OWNERSHIP OR CONTROL BY THE GOVERNMENT OF A TERRORIST COUNTRY (MAR 1998)**

**(a) DEFINITIONS.** As used in this provision--

(1) **Government of a terrorist country** includes the state and the government of a terrorist country, as well as any political subdivision, agency, or instrumentality thereof.

(2) **Terrorist country** means a country determined by the Secretary of State, under Section 6(j)(1)(A) of the Export Administration Act of 1979 (50 U.S.C. App. 2405(j)(i)(A)), to be a country the government of which has repeatedly provided support for acts of international terrorism. As of the date of this provision, terrorist countries include Cuba, Iran, Iraq, Libya, North Korea, Sudan, and Syria.

(3) **Significant interest**, as used in this provision means--

(i) Ownership of or beneficial interest in 5 percent or more of the firm's or subsidiary's securities. Beneficial interest includes holding 5 percent or more of any class of the firm's securities in "nominee shares," "street names," or some other method of holding securities that does not disclose the beneficial owner;

(ii) Holding a management position in the firm, such as director or officer;

(iii) Ability to control or influence the election, appointment, or tenure of directors or officers in the firm;

(iv) Ownership of 10 percent or more of the assets of a firm such as equipment, buildings, real estate, or other tangible assets of the firm; or

(v) Holding 50 percent or more of the indebtedness of a firm.

(b) **PROHIBITION ON AWARD.** In accordance with 10 U.S.C. 2327, no contract may be awarded to a firm or subsidiary of a firm if the government of a terrorist country has a significant interest in the firm

or subsidiary or, in the case of a subsidiary, the firm that owns the subsidiary, unless a waiver is granted by the Secretary of Defense.

(c) **DISCLOSURE.**

If the government of a terrorist country has a significant interest in the offeror or a subsidiary of the offeror, the offeror shall disclose such interest in an attachment to its offer. If the offeror is a subsidiary, it shall also disclose any significant interest each government has in any firm that owns or controls the subsidiary. The disclosure shall include--

- (1) Identification of each government holding a significant interest; and
- (2) A description of the significant interest held by each Government.

(DFARS 252.209-7001)

**K86 FOREIGN TAXES (DESC JUN 1987)**

As stated in the TAXES - FOREIGN FIXED-PRICE CONTRACTS clause, unless the contract provides otherwise, the contract price must include all applicable taxes and duties. In accordance with the TAXES - FOREIGN FIXED-PRICE CONTRACTS clause, the offeror shall list below, in paragraph (a), the specific name and amount of the foreign taxes included in the price. If, when permitted by the contract, foreign taxes are not included in the offered price but are expected to be invoiced separately, the offeror shall list the specific name and amount of these taxes in paragraph (b) below.

- (a) Foreign taxes included in the contract price are as follows:

NAME OF TAX

AMOUNT

- (b) Foreign taxes invoiced separately are as follows:

NAME OF TAX

AMOUNT

(DESC 52.229-9F10)

**K88 TAXPAYER IDENTIFICATION (OCT 1998)**

- (a) **DEFINITIONS.**



**Common parent**, as used in this provision, means that corporate entity that owns or controls an affiliated group of corporations that files its Federal income tax returns on a consolidated basis, and of which the offeror is a member.

**Taxpayer Identification Number (TIN)**, as used in this provision, means the number required by the Internal Revenue Service (IRS) to be used by the offeror in reporting income tax and other returns. The TIN may be either a Social Security Number or an Employer Identification Number.

(b) All offerors must submit the information required in paragraphs (d) through (f) of this provision to comply with debt collection requirements of 31 U.S.C. 7701(c) and 3325(d), reporting requirements of 26 U.S.C. 6041, 6041A, and 6050M, and implementing regulations issued by the IRS. If the resulting contract is subject to the payment reporting requirements described in FAR 4.904, the failure or refusal by the offeror to furnish the information may result in a 31 percent reduction of payments otherwise due under the contract.

(c) The TIN may be used by the Government to collect and report on any delinquent amounts arising out of the offeror's relationship with the Government (31 U.S.C. 7701(c)(3)). If the resulting contract is subject to the payment reporting requirements described in FAR 4.904, the TIN provided hereunder may be matched with IRS records to verify the accuracy of the offeror's TIN.

(d) **TAXPAYER IDENTIFICATION NUMBER (TIN).**

☐ TIN: \_\_\_\_\_.

☐ TIN has been applied for.

☐ TIN is not required because--

☐ Offeror is a nonresident alien, foreign corporation, or foreign partnership that does not have income effectively connected with the conduct of a trade or business in the United States and does not have an office or place of business or a fiscal paying agent in the United States;

☐ Offeror is an agency or instrumentality of a foreign government;

☐ Offeror is an agency or instrumentality of the Federal Government.

(e) **TYPE OF ORGANIZATION.**

☐ Sole proprietorship;

☐ Partnership;

☐ Corporate entity (not tax-exempt);

☐ Corporate entity (tax-exempt);

☐ Government entity (Federal, State, or local);

☐ International organization per 26 CFR 1.6049-4;

☐ Other \_\_\_\_\_.

(f) **COMMON PARENT.**

☐ Offeror is not owned or controlled by a common parent as defined in paragraph (a) of this provision.

☐ Name and TIN of common parent:

**Name:**

**TIN:**

(FAR 52.204-3)

**K93 REPRESENTATION OF EXTENT OF TRANSPORTATION BY SEA (AUG 1992)**

(a) The offeror shall indicate by checking the appropriate blank in paragraph (b) of this provision whether transportation of supplies by sea is anticipated under the resultant contract. The term "supplies" is defined in the TRANSPORTATION OF SUPPLIES BY SEA clause of this solicitation.

(b) **REPRESENTATIONS.**

The offeror represents that it--

☐ Does anticipate that supplies will be transported by sea in the performance of any contract or subcontract resulting from this solicitation.

☐ Does not anticipate that supplies will be transported by sea in the performance of any contract or subcontract resulting from this solicitation.

(c) Any contract resulting from this solicitation will include the TRANSPORTATION OF SUPPLIES BY SEA clause. If the offeror represents that it will not use ocean transportation, the resulting contract will also include the Defense FAR Supplement clause at 252.247-7024, NOTIFICATION OF TRANSPORTATION OF SUPPLIES BY SEA.

(DFARS 252.247-7022)

**K94 CERTIFICATION REGARDING DEBARMENT, SUSPENSION, PROPOSED DEBARMENT, AND OTHER RESPONSIBILITY MATTERS (MAR 1996)**

(a) (1) The offeror certifies, to the best of its knowledge and belief, that--

(i) The offeror and/or any of its principals--

(A) Are [ ], are not [ ] presently debarred, suspended, proposed for debarment, or declared ineligible for the award of contracts by any Federal agency;

(B) Have [ ] have not [ ], within a three-year period preceding this offer, been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) contract or subcontract; violation of Federal or State antitrust statutes relating to the submission of offers; or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, tax evasion, or receiving stolen property; and

(C) Are [ ], are not [ ] presently indicted for, or otherwise criminally or civilly charged by a governmental entity with, commission of any of the offenses enumerated in subdivision (a)(1)(i)(B) of this provision.

(ii) The offeror has [ ], has not [ ], within a three-year period preceding this offer, had one or more contracts terminated for default by any Federal agency.

(2) "Principals," for the purposes of this certification, means officers, directors, owners, partners, and persons having primary management or supervisory responsibilities within a business entity (e.g., general manager; plant manager; head of a subsidiary, division, or business segment, and similar positions).

THIS CERTIFICATION CONCERNS A MATTER WITHIN THE JURISDICTION OF AN AGENCY OF THE UNITED STATES, AND THE MAKING OF A FALSE, FICTITIOUS, OR FRAUDULENT CERTIFICATION MAY RENDER THE MAKER SUBJECT TO PROSECUTION UNDER SECTION 1001, TITLE 18, UNITED STATES CODE.

(b) The offeror shall provide immediate written notice to the Contracting Officer if, at any time prior to contract award, the offeror learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

(c) A certification that any of the items in paragraph (a) of this provision exists will not necessarily result in withholding of an award under this solicitation. However, the certification will be considered in connection with a determination of the offeror's responsibility. Failure of the offeror to furnish a certification or provide such additional information as requested by the Contracting Officer may render the offeror nonresponsible.

(d) Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render, in good faith, the certification required by paragraph (a) of this provision. The knowledge and information of an offeror is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

(e) The certification in paragraph (a) of this provision is a material representation of fact upon which reliance was placed when making award. If it is later determined that the offeror knowingly rendered an erroneous certification, in addition to other remedies available to the Government, the Contracting Officer may terminate the contract resulting from this solicitation for default.

(FAR 52.209-5)

**K96 CERTIFICATION AND DISCLOSURE REGARDING PAYMENTS TO INFLUENCE CERTAIN FEDERAL TRANSACTIONS (APR 1991)**

(a) The definitions and prohibitions contained in the clause, at FAR 52.203-12, LIMITATION ON PAYMENTS TO INFLUENCE CERTAIN FEDERAL TRANSACTIONS, included in this solicitation, are hereby incorporated by reference in paragraph (b) of this certification.

(b) The offeror, by signing its offer, hereby certifies to the best of his or her knowledge and belief that on or after December 23, 1989 --

(1) No Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress on his or her behalf in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement;

(2) If any funds other than Federal appropriated funds (including profit or fee received under a covered Federal transaction) have been paid, or will be paid, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress on his or her behalf in connection with this solicitation, the offeror shall complete and submit, with its offer, OMB standard form LLL, Disclosure of Lobbying Activities, to the Contracting Officer; and

(3) He or she will include the language of this certification in all subcontract awards at any tier and require that all recipients of subcontract awards in excess of \$100,000 shall certify and disclose accordingly.

(c) Submission of this certification and disclosure is a prerequisite for making or entering into this contract imposed by section 1352, title 31, United States Code. Any person who makes an expenditure prohibited under this provision or who fails to file or amend the disclosure form to be filed or amended by this provision, shall be subject to a civil penalty of not less than \$10,000, and not more than \$100,000, for each such failure. (FAR 52.203-11)

#### **SECTION L - INSTRUCTIONS, CONDITIONS, AND NOTICES TO OFFERORS**

##### **L1 STATEMENT AS TO AWARD (SERVICES) (DESC NOV 1990)**

Award will not be made on less than the service stated as the first program year requirements. (Program year is the first year of the contract beginning with the service start date.)

(DESC 52.211-9F25)

##### **L1.02 PROPOSAL ACCEPTANCE PERIOD (DESC NOV 1991)**

(a) **Acceptance period**, as used in this provision, means the number of calendar days available to the Government for awarding a contract from the date specified in this solicitation for receipt of proposals.

(b) This provision supersedes any language pertaining to the acceptance period that may appear elsewhere in this solicitation.

(c) The Government requires a minimum acceptance period of **180** calendar days.

(d) If the offeror specifies an acceptance period which is less than that required by the Government, such offer may be rejected.

(e) The offeror agrees to execute all that it has undertaken to do, in compliance with its offer, if such offer is acceptable to the Government and is accepted within the acceptance period stated in (c) above or within any extension thereof that has been agreed to by the offeror.

(DESC 52.215-9FB1)

##### **L2.01 INSTRUCTIONS TO OFFERORS (RFP) (DESC OCT 1981)**

Offerors are expected to examine all sections of the solicitation and the Information to Offerors form. Failure to do so will be at offeror's risk. Each offeror shall furnish the information required by the solicitation. Offers and modifications thereto shall be signed and dated. The name and title of the person authorized to sign the offer is to be printed or typed on the offer. The offer shall be enclosed in sealed envelopes and addressed to the office specified in the solicitation. Erasures or other changes must be initialed by the person signing the offer. The offeror shall show the hour and date specified in the solicitation for receipt, the solicitation number, and the name and address of the offeror on the face of the envelope.

(DESC 52.215-9F45)

##### **L2.10 SUBMISSION OF OFFERS IN THE ENGLISH LANGUAGE (APR 1991)**

Offers submitted in response to this solicitation shall be in the English language. Offers received in other than English shall be rejected. (FAR 52.214-34)

**L2.10-1 SUBMISSION OF OFFERS IN U.S. CURRENCY (APR 1991)**

Offers submitted in response to this solicitation shall be in terms of U.S. dollars. Offers received in other than U.S. dollars shall be rejected. (FAR 52.214-35)

**L2.11-2 FACSIMILE PROPOSALS (OCT 1997)**

(a) **DEFINITION. Facsimile proposal**, as used in this provision, means a proposal, revision, or modification of a proposal, or withdrawal of a proposal that is transmitted to and received by the Government via facsimile machine.

(b) Offerors may submit facsimile proposals as responses to this solicitation. Facsimile proposals are subject to the same rules as paper proposals.

(c) The telephone number of receiving facsimile equipment is \_\_\_\_\_.

(d) If any portion of a facsimile proposal received by the Contracting Officer is unreadable to the degree that conformance to the essential requirements of the solicitation cannot be ascertained from the document—

(1) The Contracting Officer immediately shall notify the offeror and permit the offeror to resubmit the proposal;

(2) The method and time for resubmission shall be prescribed by the Contracting Officer after consultation with the offeror; and

(3) The resubmission shall be considered as if it were received at the date and time of the original unreadable submission for the purpose of determining timeliness, provided the offeror complies with the time and format requirements for resubmission prescribed by the Contracting Officer.

(e) The Government reserves the right to make award solely on the facsimile proposal. However, if requested to do so by the Contracting Officer, the apparently successful offeror promptly shall submit the complete original signed proposal.

(FAR 52.215-5)

**L3.03 LATE SUBMISSIONS, MODIFICATIONS, AND WITHDRAWALS OF BIDS (MAY 1997)**

(a) Any bid received at the office designated in the solicitation after the exact time specified for receipt will not be considered unless it is received before award is made and it--

(1) Was sent by registered or certified mail not later than the fifth calendar day before the date specified for receipt of bids (e.g., a bid submitted in response to a solicitation requiring receipt of bids by the 20th of the month must have been mailed by the 15th);

(2) Was sent by mail (or telegram or facsimile, if authorized) or hand-carried (including delivery by a commercial carrier) if it is determined by the Government that the late receipt was due primarily to Government mishandling after receipt at the Government installation;

(3) Was sent by U.S. Postal Service Express Mail Next Day Service-Post Office to Addressee, not later than 5:00 P.M. at the place of mailing two working days prior to the date specified for receipt of bids. The term "working days" excludes weekends and U.S. Federal holidays; or

(4) Was transmitted through an electronic commerce method authorized by the solicitation and was received at the initial point of entry to the Government infrastructure not later than 5:00 p.m., one working day prior to the date specified for receipt of bids.

(b) Any modification or withdrawal of a bid is subject to the same conditions as in paragraph (a) of this provision.

(c) The only acceptable evidence to establish the date of mailing of a late bid, modification, or withdrawal sent either by registered or certified mail is the U.S. or Canadian Postal Service postmark both on the envelope wrapper and on the original receipt from the U.S. or Canadian Postal Service. Both postmarks must show a legible date and the bid, modification, or withdrawal shall be processed as if mailed late. "Postmark" means a printed, stamped, or otherwise placed impression (exclusive of a postage meter machine impression) that is readily identifiable without further action as having been supplied and affixed by employees of the U.S. or Canadian Postal

Service on the date of mailing. Therefore, bidders should request the postal clerks to place a legible hand cancellation bull's-eye postmark on both the receipt and the envelope or wrapper.

(d) The only acceptable evidence to establish the time of receipt at the Government installation is the time/date stamp of that installation on the bid wrapper or other documentary evidence of receipt maintained by the installation.

(e) The only acceptable evidence to establish the date of mailing of a late bid, modification, or withdrawal sent by U.S. Postal Service Express Mail Next Day Service-Post Office to Addressee is the date entered by the post office receiving clerk on the "Express Mail Next Day Service-Post Office to Addressee" label and the postmark on the envelope or wrapper and on the original receipt from the U.S. Postal Service. "Postmark" has the same meaning as defined in paragraph (c) of this provision, excluding postmarks of the Canadian Postal Service. Therefore, bidders should request the postal clerk to place a legible hand cancellation bull's-eye postmark on both the receipt and the envelope or wrapper.

(f) Notwithstanding paragraph (a) of this provision, a late modification of an otherwise successful bid that makes its terms more favorable to the Government will be considered at any time it is received and may be accepted.

(g) Bids may be withdrawn by written notice or telegram (including mailgram) received at any time before the exact time set for receipt of bids. If the solicitation authorizes facsimile bids, bids may be withdrawn via facsimile received at any time before the exact time set for receipt of bids, subject to the conditions specified in the provision entitled "Facsimile Bids." A bid may be withdrawn in person by a bidder or its authorized representative if, before the exact time set for receipt of bids, the identity of the person requesting withdrawal is established and the person signs a receipt for the bid.

(h) If an emergency or unanticipated event interrupts normal Government processes so as to cause postponement of the scheduled bid opening, and urgent Government requirements preclude amendment of the solicitation or other notice of an extension of the opening date, the time specified for receipt of bids will be deemed to be extended to the same time of day specified in the solicitation on the first workday on which normal Government processes resume.

(FAR 52.214-7)

## **L5 SERVICE OF PROTEST (AUG 1996)**

(a) **Protests**, as defined in section 33.101 of the Federal Acquisition Regulation, that are filed directly with an agency, and copies of any protests that are filed with the General Accounting Office (GAO), shall be served on the Contracting Officer (addressed as follows) by obtaining written and dated acknowledgment of receipt from--

ATTN: **DFSC-CPA**  
DEFENSE ENERGY SUPPORT CENTER  
8725 JOHN J KINGMAN ROAD SUITE 4950  
FORT BELVOIR VA 22060-6222

(b) The copy of any protest shall be received in the office designated above within one day of filing a protest with GAO.

(FAR 52.233-2)

### **L5.01-1 AGENCY PROTESTS (DEC 1999) - DLAD**

Companies protesting this procurement may file a protest (1) with the Contracting Officer, (2) with the General Accounting Office, or (3) pursuant to Executive Order No. 12979, with the Agency for a decision by the Activity's Chief of the Contracting Office. Protests filed with the Agency should clearly state that they are an "Agency Level Protest under Executive Order No. 12979." (**NOTE:** DLA procedures for Agency Level Protests filed under Executive Order No. 12979 for a higher level decision on the initial protest than would occur with a protest to the Contracting Officer; this process is not an appellate review of a Contracting Officer's decision on a protest previously filed with the Contracting Officer.) Absent a clear indication of the intent to file an agency level protest, protests will be presumed to be protests to the Contracting Officer.

(DLAD 52.233-9000)

**L11 POSTPONEMENT OF OPENING/CLOSING OF OFFERS (OCT 1982) DLAD**

If the opening/closing of offers is postponed because emergency or unanticipated events (such as, but not limited to, flood, fire, accident, weather condition, or strikes) result in closing the designated site for opening/closing of offers, so that the conduct of openings/closings as scheduled is impracticable, offers or modifications or withdrawal of offers received prior to the time of actual opening/closing will be considered as timely. Offers or modifications or withdrawals of offers received after the time of actual opening/closing of offers, when opening/closing of offers was postponed as provided above, will not be considered except as provided in FAR 52.214-7 or 52.215-10, as applicable. (DLAD 52.214-9000)

**L17 AVAILABILITY OF SPECIFICATIONS LISTED IN THE DOD INDEX OF SPECIFICATIONS AND STANDARDS (DODISS) AND DESCRIPTIONS LISTED IN THE ACQUISITION MANAGEMENT SYSTEMS AND DATA REQUIREMENTS CONTROL LIST, DOD 5010.12-L (AUG 1998)**

(a) Copies of specifications, standards and data item descriptions cited in this solicitation may be obtained for a fee by submitting a request to the--

DEPARTMENT OF DEFENSE SINGLE STOCK POINT (DODSSP)  
BUILDING 4 SECTION D  
700 ROBBINS AVENUE  
PHILADELPHIA PA 19111-5094

Telephone: (215) 697-2667/2179  
Facsimile: (215) 697-1462.

- (b) Order forms, pricing information, and customer support information may be obtained--  
(1) By telephone at (215) 697-2667/2179; or  
(2) Through the DoDSSP Internet site at <http://www.dodssp.daps.mil>.  
(FAR 52.211-2)

**L17.02 QUALITY CONTROL PLAN (DESC AUG 1991)**

(a) The offeror shall prepare and submit a Quality Control Plan (QCP), in English and in duplicate, to the Contracting Officer with the initial proposal. The QCP shall include the following quality control procedures employed by the Contractor: (1) Receiving (both product and additives), (2) blending, (3) sampling, (4) testing, (5) storage and handling, (6) loading and shipping, (7) calibration of measuring and test equipment (IAW MIL-STD-978 latest revision), (8) quantity measurement, (9) records and reports, and (10) corrective actions (to include, but not be limited to, procedures for notification of Quality Representative; actions to be taken on discovery of off-spec product during receipts/shipments; upgrading procedures for Contractor-caused contamination; leaks; etc.). The plan shall also include an organizational chart of key personnel and their responsibilities and a schematic diagram of the facility with key inspection/activity points marked for each product handled.

(b) The QCP shall require that each Contractor employee be familiar with its content and shall state that it must be reviewed semiannually and revised as needed.

(DESC 52.246-9F06)

**L65.12 COST OR PRICING DATA (OVERSEAS) (DESC FEB 1996)**

(a) If the total dollar value of the proposal exceeds \$500,000 or more, and the offeror does not fall within one of the exemptions listed in Federal Acquisition Regulation (FAR) 15.804-1, as determined by the Contracting Officer, cost or pricing data must be submitted on SF 1411, Contract Pricing Proposal Cover Sheet, pursuant to Public Law 87-653. In this instance, offerors will be required to submit a Certificate of Current Cost or Pricing Data at the conclusion of negotiations. In addition, submission of Form CASB-CMF, Facilities Capital Cost of Money Factors Computation, is requested. This information will be used to establish a profit objective in accordance with FAR Subpart 15.9. Offerors may address questions and requests for copies of required forms to the Contracting Officer.

(b) If the total dollar value of the proposal is \$500,000 or more and the offeror does fall within one of the exemptions listed in FAR 15.804-1, as determined by the Contracting Officer, the offeror must submit a copy

of the relevant catalog/price sheet and/or examples of commercial sales or other data to support the offered price, and any other information requested by the Contracting Officer.

(DESC 52.215-9FC5)

**L74 TYPE OF CONTRACT (APR 1984)**

The Government contemplates award of a firm-fixed price contract resulting from this solicitation.

(FAR 52.216-1)

**L87.06 CONDITIONS FOR MULTIYEAR OFFERS (DESC FEB 1995)**

(a) Offerors must submit a price for the total multiyear requirements. Offers for less than the multiyear requirements will not be considered for award, except for items specifically designated as one-year requirements.

(b) An offer price on a multiyear line item shall apply to the entire period of the multiyear requirement.

(c) Price changes will be made in accordance with economic price adjustment provisions in the contract.

(d) Award will not be made for less than the multiyear requirements, except for those items designated as one-year requirements.

(DESC 52.207-9FA5)

**L116.01 DATA REQUIRED (STORAGE) (DESC SEP 1994)**

(a) Each proposal shall be accompanied by a map (a city street map is satisfactory) showing the exact location of the facility, a schematic drawing showing the facility layout and its relation to other facilities in the area, a description of equipment to be provided, line systems, pump capacities, and other data.

(b) Offeror must verify that certified strapping charts are available for each tank offered and that such charts will be provided upon request.

(c) Offerors are requested to provide, in barrels, the tank bottom for each tank, the pipeline and manifold fill for the facilities offered, and the capacity of the facilities available for receiving ballast water. Offerors are required to provide the maximum safe fill capacity for each tank offered, including a summary of how the maximum safe fill capacity computation was calculated.

(d) If the proposal is based on providing a common system isolated in accordance with the SERVICES TO BE FURNISHED clause, including a single-product system that is not for exclusive use of DESC-owned product, in lieu of the preferred dedicated system, offerors must submit a general description of such system including detailed handling procedures that shall be followed to ensure the quality of U.S. Government-owned product. The detailed procedures must include as a minimum (1) the types and grades of all other products moved through any part of the offered isolated system, including a list of the products' specifications, and (2) detailed procedures on how non-Government line fills are to be handled prior to receipt/shipment of Government product, i.e., flush and drain line, etc.

(DESC 52.215-9F90)

**L201.02 INSTRUCTIONS TO OFFERORS (COCO) (DESC MAY 1997)**

Offeror shall submit an original and one copy of their proposals, divided into the following sections labeled **Offeror Submission Package** and **Past Performance**:

**(a) Offeror Submission Package.**

(1) Complete all required representations and certifications, and provide proposed prices in the SERVICES TO BE FURNISHED AND PRICES clause.

(2) If any exceptions are to be taken to the terms and conditions of the solicitation, indicate (on a separate sheet) the specific paragraph and submit as part of this Offeror Submission Package. Only exceptions detailed here will be considered exceptions to the requirements of the solicitation.

**(b) Past Performance.**

(1) The offeror shall list all contracts and subcontracts completed in the last three years and those in progress that are related to the proposed contract. These contracts may include efforts undertaken on behalf of private industry, quasi-government organizations, or Federal agencies, including those performed for non-DoD activities. The offeror should include the following information:

- (i) Name and address of contracting activity;
- (ii) Contract number;
- (iii) Contract type and dollar value;
- (iv) Brief description of the work (if the offeror is a large business, include a description of any subcontracting);
- (v) Contracting Officer, Contracting Officer's Representative; Administrative Contracting Officer, and Program Manager (all that are applicable) with telephone numbers; and
- (vi) Significant problem(s) encountered and the corrective action(s) taken.

(DESC 52.215-9F35)

**L205 COMMERCIAL AND GOVERNMENT ENTITY (CAGE) CODE REPORTING (AUG 1999)**

- (a) The offeror is requested to enter its CAGE code on its offer in the block with its name and address. The CAGE code must be for that name and address. Enter **CAGE** before the number.
- (b) If the offeror does not have a CAGE code, it may ask the Contracting Officer to request one from the Defense Logistics Information Service (DLIS). The Contracting Officer will--
  - (1) Ask the Contractor to complete Section B of a DD Form 2051, Request for Assignment of a Commercial and Government Entity (CAGE) Code;
  - (2) Complete section A and forward the form to DLIS; and
  - (3) Notify the Contractor of its assigned CAGE code.
- (c) Do not delay submission of the offer pending receipt of a CAGE code.

(DFARS 252.204-7001)

**SECTION M - EVALUATION FACTORS FOR AWARD**

**M2.100 EVALUATION OF OFFERS (MULTIYEAR COCO STORAGEWITH OPTIONS)**

All offers will be evaluated on price and past performance. These two factors are equal in importance. Award will be made to the offerors who represents the best value combination of price and past performance.

**a. Price**

The low priced offer will be determined by computing storage costs for a two year (any offer of less than a five year period (two year multiyear basic award plus three one-year option period) will be considered non-responsive to this solicitation), performance start dates assumed equal. This will be accomplished by:

Multiplying the proposed monthly service charge offered per tank by 24 months.

Multiplying the proposed excess throughput charge by the Government's estimate for throughput based on 24 months.

Addition of Port fees based on the estimated throughput at the offered location if those Port fees are to be reimbursable under a contract line item in a resulting contract.

Addition of Lab services costs based on an average yearly testing requirement if those costs are to be reimbursable under a contract line item in a resulting contract.

Costs Penalties will be applied for specific costs resulting from exceptions or conditions of the offer as applicable under the requirements of clause B34.01, F1.04, F1.05, and L116.01.

**b. Past Performance**

The Government will evaluate the quality of the offeror's past performance. This may include any aspect of past performance that is related to this contract. A record of marginal or unacceptable past performance may be considered an indication that future performance will be less than satisfactory. However, a record of acceptable (or even excellent) past performance will not result in a favorable assessment of an otherwise unacceptable proposal.



In investigating an offeror's past performance, the Government may consider information in the offeror's proposal and information obtained from other sources, including past and present customers and their employees, other subcontractors, and any other person or organization who may have useful information.

Proposals may be rated differently within each category, i.e. two proposals may receive an exceptional rating, but one may be more exceptional than the other.

The following evaluation provision may be used after all other evaluation criteria have been applied.

**M43.03 EVALUATION OF OPTIONS (COCO) (DESC MAY 1999)**

(a) Offers will be evaluated for purposes of award by adding the total per barrel per year price for all option periods to the total per barrel per year price for the basic period. Evaluation of options will not obligate the Government to exercise the to option or options.

(b) Any offer that is materially unbalanced as to prices for basic and option periods may be rejected as non-responsive. An unbalanced offer is one that is based on prices significantly less than cost for some work and prices that are significantly overstated for other work.

(DESC 52.217-9F15)

**M72 EVALUATION OF OFFERS (EXCEPTIONS/DEVIATIONS) (DESC APR 1997)**

(a) Offerors are expected to submit offers in full compliance with all terms and conditions of this solicitation.

(b) Any exceptions/deviations to the terms and conditions of this solicitation will result in the Government's determination that either--

(1) The exception/deviation is material enough to warrant rejection of the offer in part or in full;  
or

(2) The exception/deviation is acceptable.

(c) If the exception/deviation is in reference to a specification contained in this solicitation and the offeror cannot supply product fully meeting the required specification(s), the product can be offered for consideration provided the offeror clearly indicates, by attachment to the offer, the extent to which any product offered differs from the required specification(s).

(d) If the exception/deviation is in reference to a particular test, inspection, or testing method contained in this solicitation, the offer can be considered provided the offeror clearly indicates, by attachment to the offer, the extent to which its offer differs from those requirements.

(e) If the exception/deviation is determined acceptable, offered prices may be adjusted, for evaluation purposes only, by the Government's best estimate of the quantitative impact of the advantage or disadvantage to the Government that might result from making an award under those circumstances.

(DESC 52.209-9F45)

THE FOLLOWING SAMPLING AND TESTING REQUIREMENTS ARE **MINIMUM** REQUIREMENTS. SPECIFIC SAMPLING AND TESTING REQUIREMENTS MUST BE INCLUDED IN THE CONTRACTOR'S QUALITY CONTROL PLAN (CLAUSE C19.07, *TESTING OF PETROLEUM PRODUCTS*) WHICH MUST BE ACCEPTABLE TO THE U.S. GOVERNMENT.

TESTING REQUIREMENTS: MIL-DTL-83133E, (1 APR 99)  
GRADE **JP-8**

LOCATION OF STOCK	TESTS
<p>1. All level sample from <b>each tank</b> on vessel prior to discharge or after loading.</p> <p>(Flash Point tests run on vessel composite samples).</p>	<p>a) Workmanship, Finish, &amp; Appearance b) Color, Visual c) API Gravity or Density d) Flash Point</p>
<p>2. <b>Composite Samples:</b></p>	<p>a) Workmanship, Finish, &amp; Appearance b) Color, Visual c) API Gravity or Density d) Flash Point e) Particulate Matter f) Distillation g) Copper Strip Corrosion h) Freezing Point i) Existent Gum j) Water Reaction k) Fuel Systems Icing Inhibitor (if present) l) Filtration Time m) Water Separation Index Modified (if fuel does not contain conductivity additive.) n) Conductivity</p>

**NOTE 1:** Tanker/Barge Composite Samples **prior to Discharge:**

Multi-Product: Discharge of product may commence after conformance with Paragraph 1 tests; Paragraph 2 tests will be completed prior to or during discharge.

Single-Product: Discharge of product may commence after conformance with Paragraph 1 tests; Paragraph 2 tests will be performed on the retained sample if receiving tanks are found to be off-specification.

**NOTE 2:** Tanker/Barge Composite Samples **after Loading:**

Vessel may sail after completion of Paragraph 1 tests; Paragraph 2 tests will be completed **prior to** vessel arrival at destination.

LOCATION OF STOCK	TESTS
3. One gallon <b>line sample</b> taken at dock header at one hour, midpoint, and one hour prior to completion of discharge.	e) Particulate Matter on each sample.
4. For <b>split cargo</b> discharges where one product is Jet A-1 and the other product is JP-4, AVGAS, or MOGAS. A dock header sample will be taken during the Jet A-1 discharge one half-hour after the start of discharge and hourly thereafter.	d) Flash Point on each sample.
5. Composite Sample from <b>storage tanks</b> after receipt.	Same as Paragraph 2, above, plus: o) Thermal Stability on tanker receipts.
6. <b>Line sample</b> during pipeline movement or Line sample from fillstand prior to start of loading.	Same as Paragraph 1, above.
7. Composite sample of loaded <b>tank trucks/tank cars</b> .	Same as Paragraph 1, above.
8. <b>Interface mixtures</b> from pipeline for injection.	Same as Paragraph 2, above, plus: o) Thermal Stability
9. Composite sample from storage not receiving fuel from an outside source in previous six months).	a) Workmanship, Finish, & Appearance b) Color, Saybolt c) API Gravity or Density d) Flash Point e) Particulate Matter f) Distillation g) Copper Strip Corrosion h) Freezing Point i) Existent Gum j) Water Reaction k) Fuel Systems Icing Inhibitor (if present) l) Filtration Time m) Water Separation Index Modified (if fuel does not contain conductivity additive) n) Conductivity o) Thermal Stability p) Acid Number

LOCATION OF STOCK	TESTS
10. <b>Individual Tests</b> as directed by the cognizant Quality Office.	All tests listed in Paragraph 9, above, plus:  q) Aromatics r) Olefins s) Mercaptan Sulfur/Doctor Test t) Total Sulfur u) Hydrogen Content v) Net Heat of Combustion (MJ/kg): w) Luminometer, <b>or</b> Smoke Point, <b>or</b> Smoke Point/Naphthalenes x) Viscosity at -20°C y) Calculated Cetane Index z) Sulfides in Water (Clause E34)

ALL TEST METHODS TO BE AS SPECIFIED IN SPECIFICATION ASTM-D-1655 (LATEST REVISION), GRADE Jet A-1, EXCEPT FOR SULFIDES IN WATER WHICH SHALL BE PERFORMED IN ACCORDANCE WITH CLAUSE E34 (*TESTS FOR SULFIDES IN WATER*).